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The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "The challenge of outsourcing for the United Nations system" (JIU/REP/97/5).

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THE CHALLENGE OF OUTSOURCING FOR THE UNITED NATIONS SYSTEM

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ACRONYMS

ACC	Administrative Committee on Coordination
CCAQ (FB)	Consultative Committee on Administrative Questions (Financial and Budgetary Questions), a subsidiary body of the ACC
CERN	Centre Européen pour la Recherche Nucléaire
EIU	Economic Intelligence Unit
ESA	European Space Agency
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICC	International Computing Centre
ICSC	International Civil Service Commission
ILO	International Labour Organization
IMIS	Integrated Management Information System
IMO	International Maritime Organization
ISO	International Organization for Standardization
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
OECD	Organization for Economic Cooperation and Development
OIOS	Office of Internal Oversight Services
OSCE	Organization for Security and Co-operation in Europe
SMCC	Staff-Management Consultative Committee
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNOG	United Nations Office in Geneva
UNOPS	United Nations Office for Project Services
UPU	Universal Postal Union
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

EXECUTIVE SUMMARY:
OBJECTIVE, CONCLUSIONS, AND RECOMMENDATIONS

Objective:

To use the challenge of outsourcing to help build into United Nations system organizations continuing incentives for improved effectiveness.

Conclusions:

A. The value of outsourcing comes from the alternative means it provides for achieving cost savings and/or other important improvements in performing activities and services of an organization. Whether or not specific activities or services are outsourced is less important than having agreed rules and procedures to assure consideration, where appropriate, of external as well as in-house options for performing them. (See paras. 1; 81-84)

B. Outsourcing long has been used throughout the United Nations system, but mostly in an ad hoc manner without benefit of a defined policy. (See paras. 13-28)

C. More intentional and planned use of the challenge of outsourcing would provide an important means for building into the United Nations system continuing incentives for improved performance by taking advantage of competition to foster a culture in the organizations of openness to innovation and concern for cost-effectiveness. (See paras. 64-80)

D. The use of outsourcing involves potential problems that must be addressed:

(1) respecting the international character of United Nations system organizations;

(2) assuring the necessary expertise to provide appropriate control and/or management of outsourced contracts; and

(3) avoiding negative impact on affected staff. (See paras. 29-63)

E. Staff should not be penalized for past inefficiencies in the management of organizations or for technological and/or other developments related to their work beyond their control. (See paras. 48-52)

F. Organizations of the United Nations system do not have a senior level focal point within their Secretariats explicitly responsible for facilitating and encouraging the best use of the challenge of outsourcing. (See paras. 97-104)

G. Organizations of the United Nations system could share more actively experiences and lessons learned regarding the use of outsourcing, and coordinate more effectively their approaches to the use of outsourcing to profit from economies of scale and increased bargaining power. (See paras.105-109)

Recommendations:

Rec. 1. The legislative organs of each participating organization should request their Executive Heads to prepare, for approval at the appropriate level, before their next session, a policy statement committing their organizations to the use of the challenge of outsourcing as a means for achieving improved cost-effectiveness. This policy statement would include, inter alia:

(a) the criteria for determining what current and planned non-core activities should be considered for outsourcing; and

(b) measures to assure that outsourcing will not compromise the international character and mandate of the organization. (See para. 85)

Rec. 2. The Executive Heads of participating organizations should prepare, for approval at the appropriate level, administrative rules and/or procedures for implementation of the planned policy on the use of the challenge of outsourcing for their organizations that would, inter alia:

(a) guide implementation of the criteria approved for determining whether or not an activity or service should be outsourced;

(b) assure that organizations maintain appropriate control and management over outsourced activities; and

(c) improve cost-accounting methodologies in order to provide a better basis for deciding on the merits of outsourcing in each instance. (See para. 88)

Rec. 3. The Executive Heads of participating organizations should prepare, for approval at the appropriate level, changes in the structure and/or operating procedures of their Secretariats to facilitate and encourage the best use of the challenge of outsourcing, including the possible designation of an official to serve as "Facilitator" for this purpose. (See para. 100)

Rec. 4. The Executive Heads of participating organizations should assure that information on the use of outsourcing is comprehensive and transparent in the regular programme budget submissions and performance reports for their organizations. (See para. 111)

Rec. 5. The Executive Heads of participating organizations should make every effort to avoid negative impact on staff affected by decisions to outsource specific activities or services and, for when negative impact is unavoidable, prepare, for approval at the appropriate level, measures to assure appropriate protection for affected staff members. (See para. 50)

Rec. 6. The United Nations General Assembly should request the ACC, making use of the existing ACC machinery, i.e., CCAQ(FB), to:

(a) develop a system-wide definition of outsourcing;

(b) encourage increased sharing among United Nations system organizations of experiences in the use of outsourcing; and

(c) explore possibilities for joint and coordinated actions in regard to the use of outsourcing in order to gain the advantages of economies of scale and increased bargaining power. (See paras. 2; 108)

Rec. 7. Legislative organs of participating organizations should decide to review and evaluate the implementation of the approved policy on outsourcing three years after it has been initiated and, for this purpose, request Executive Heads to submit a report on the implementation of the approved outsourcing policy which would indicate, inter alia, savings and/or benefits achieved, special problems encountered, solutions attempted and proposals for appropriate improvements. (See para. 112)

I. INTRODUCTION

1. Outsourcing presents a challenge to the organizations of the United Nations system. Meeting this challenge of outsourcing does not mean necessarily deciding in favour of outsourcing any specific activity or service, but it does mean exposing in a planned manner all appropriate activities or services to the competition of outsourcing, i.e., actively considering external as well as in-house options for performing them. This report urges use of the challenge to help instill in the organizations of the United Nations system a management culture of innovation and cost-effectiveness. These are absolute requirements in the current period of economic scarcity, accelerating technological changes and increased demands on the organizations.

2. There is no agreed or commonly used definition of "outsourcing" within the United Nations system[1], nor in the literature on the subject. It would be useful for the System to agree on a definition, as called for in **Recommendation 6** in the Executive Summary.[2] This would facilitate comparisons among organizations and, thereby, make it easier for Secretariats to learn lessons from each other on outsourcing and to gain economies of scale by jointly outsourcing activities or services. It also would assist Member States in comparing outsourcing practices of one organization with those of others in the effective exercise of their oversight functions. The definition used in this report is:

> Outsourcing is contracting with a third party (e.g., independent individuals, private companies, governmental agencies, non-governmental or inter-governmental organizations) to perform specific tasks, and/or provide services and their related goods, based on specified terms and conditions. Consequently, outsourcing does not include the simple procurement of goods, such as office supplies or commodities; outsourcing also excludes the replacement or supplementation for general purposes of staff by non-regular staff (e.g., short-term, temporary, free-lance staff).

The common services arrangements among United Nations system organizations are one form of outsourcing as defined for this report; implementation of the report's recommendations would establish a framework that could help to guide the use of such common services arrangements.[3]

3. While this definition was useful for this report, the Administrative Committee on Coordination may have reasons for another formulation. More important than the formulation itself would be agreement on a common definition for use throughout the United Nations system organizations.

4. With the exception of peace-keeping activities, this report has taken advantage of the JIU's uniquely broad mandate to make the scope of the report United Nations system-wide. The use of outsourcing is an issue that has impact throughout the System, and Member States and Secretariats throughout the System have expressed interest in it, positive and negative. The United Nations peace-keeping activities have been excluded from this report, due to their magnitude and distinct character.

5. Work on this report was done in close cooperation with the United Nations Office of Internal Oversight Services (OIOS) in view of the fact that the United Nations General Assembly had requested OIOS "to undertake a comprehensive audit of the outsourcing practices, including, in particular, the contracting process, and to report thereon to the General Assembly at its fifty-first session" (Resolution 50/214, Part III, paragraph 55). The requested report by OIOS has been issued as an annex to document A/51/804 of 21 February 1997. The in-depth examination of outsourcing in the United Nations by the OIOS and the broader system-wide examination by the JIU usefully complement each other, and the recommendations of the reports are mutually supportive. As directed by the General Assembly resolution, the OIOS report concentrates in more detail on the application of the contracting process for outsourced activities and services in the United Nations, while this report is more oriented towards the use of the challenge of outsourcing as a management tool for instilling a commitment to innovation and cost-effectiveness in the Secretariats of organizations throughout the United Nations system. The two reports provide a good example of effective synergy between the JIU and the OIOS, as indicated by the Under-Secretary-General for Internal Oversight Services in his preface to the Report of his Office for the period 1 July 1995 to 30 June 1996 (Annex to A/51/432).

6. This report begins with an overview of outsourcing as it currently is practised in United Nations system organizations. In doing this, the report highlights the longstanding and widespread use of outsourcing in the United Nations system, albeit in a non-systematic manner without the benefit of a defined policy. The report then addresses the significant potential risks and problems that could result from the use of outsourcing, and what could be done about them. There then follows a discussion of the need for a policy on outsourcing and the resulting benefits to be gained. The report concludes with suggestions for making the challenge of outsourcing work, including structural and/or procedural changes within United Nations system organizations and enhanced coordination among the organizations on the use of outsourcing.

7. Planning for this report was based on a review of the literature on the subject of outsourcing and of the relevant United Nations system documents and other information available. Specific data for the report came primarily from a questionnaire sent to all participating organizations and from interviews with well over 200 officials concerned with all aspects of outsourcing in the United Nations system, and in a number of other organizations outside the System, such as: the Organization for Economic Cooperation and Development (OECD), the European Union (EU), the North Atlantic Treaty Organization (NATO), the Organization for Security and Co-operation in Europe (OSCE) , the International Or-ganization for Standardization (ISO), the European Space Agency (ESA) and, especially, the Centre Européen pour la Recherche Nucléaire (CERN). Also consulted were officials of Member States known for their concern and experience with outsourcing and individuals knowledgeable about outsourcing issues, who helpfully shared what they knew.

8. The annexed table, in addition to serving as the basis for the analysis in this report, was intended to serve also as a baseline for periodic re-examinations to monitor the future handling of outsourcing in the System. However, not all of the Secretariats were able to provide the data requested on a fully comprehensive basis for their organizations and the consistency of the data ultimately received is uncertain. These shortcomings result at least in part from there being neither a common definition of outsourcing nor an explicit policy on the use of outsourcing, both of which are recommended in this report.

9. The United Nations, in particular, was able to supply only piece-meal data, not having coherent and comprehensive information regarding the use of outsourcing for the organization as a whole. The Unit was unable to consolidate in a meaningful way the partial data received from the United Nations. For this reason, the column for the United Nations in the annexed table had to be left blank. Nevertheless, information gained in interviews with United Nations officials was most helpful and was used extensively in preparing the report.

10. As a result of the potentially inconsistent and not fully comprehensive data on which it is based, the annexed table may under-represent the current use of outsourcing in the United Nations system, particularly by field offices which make widespread use of outsourcing. It also may distort comparisons among the organizations regarding this issue. Nevertheless, the table still can be considered as sufficiently indicative for the purposes of this report. Follow up reports on this issue will require more reliably consistent and comprehensive data, which would result from implementation of this report's recommendations.

11. We take this opportunity to express our thankfulness and appreciation to all of those who contributed their ideas and expertise, and their time and effort in providing information for the report. We would, in particular, pay special tribute to FAO which in November 1994 suggested some issues for review which led us to prepare this report on overall aspects of outsourcing in the United Nations system organizations.

II. OVERVIEW OF OUTSOURCING IN THE UNITED NATIONS SYSTEM

12. In recent years there has been a new interest in the use of outsourcing by governments and the private sector to improve effectiveness and help meet the requirements of growing budgetary constraints. However, outsourcing is not a new practice, and its use certainly is not new for the organizations of the United Nations system. It is a practice that has been in use by at least some of the organizations since their founding, which predates the United Nations in four cases, and it is a practice now in use to at least a limited extent by all organizations of the System. This section of the report presents an overview of the use of outsourcing in the United Nations system, and how this practice is being managed.

A. Longstanding practice

13. The use of outsourcing in the organizations of the United Nations system dates back even into the pre-history of the System. All four Specialized Agencies that predated the United Nations were making use of outsourcing long before 1945. The International Telecommunication Union, established in 1865 as the International Telegraph Union, and the Universal Postal Union, established in 1874, were both outsourcing their printing needs back in the 19th century. Predecessor organizations of WIPO, in particular the International Union for the Protection of Industrial Property established in 1883, have long-standing experience in outsourcing as well. Finally, the International Labour Organization, founded in 1919, also always has outsourced its printing needs.

14. Over the years, the use of outsourcing has developed and, as indicated in the table annexed to this report, the practice now is in use by all organizations of the System.

B. Budgetary magnitude of the use of outsourcing

15. The use of outsourcing is widespread among the organizations of the United Nations system. However, despite the high share of resources allocated for outsourcing by UNHCR (47%), UNFPA (44%), and WIPO (26%), only a relatively small share of the system's overall resources is allocated for outsourcing. The annexed table (not including the United Nations, as explained in paragraph 9) indicates that the Specialized Agencies and IAEA in 1995 allocated about $73 million of their combined regular budget and extrabudgetary funds for outsourced activities. This included 3.5 percent of their regular budgets and 0.4 percent of their extrabudgetary funds. For the five major Operational Funds and Programmes included in the table, a total of $755 million was devoted to outsourced activities and services, which amounted to 10 percent of their total funds. These calculations should be viewed as indicative only due to the status of the data on which they are based, as noted in paragraphs 8-10.

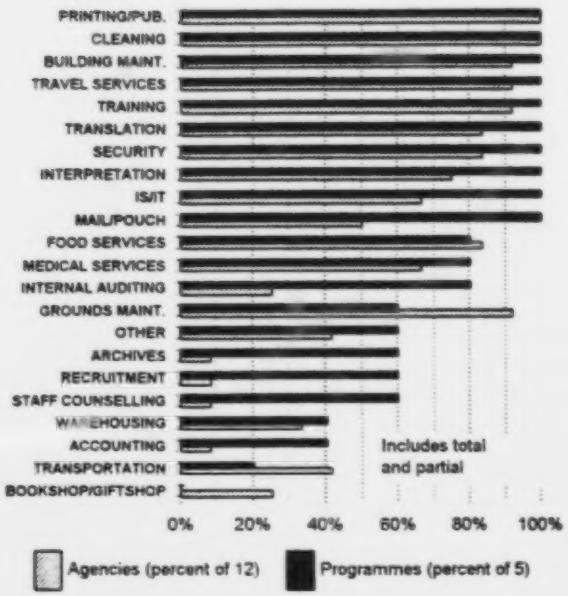
C. Kinds of outsourcing

16. Consideration of the issue of outsourcing usually focuses on its use for performing administrative support-type services. As indicated in the annexed table, this kind of outsourcing is used by all organizations in United Nations system. However, the table also indicates that one half of the Specialized Agencies and IAEA and all of the Operational Funds and Programmes, except UNDP,[4] are making use of outsourcing for substantive or programmatic purposes as well.

17. Figure 1 indicates that the Operational Funds and Programmes, as a whole, make more use of outsourcing for administrative/support-type services than do the Specialized Agencies and IAEA. In 1995, ten services were outsourced by all of the Operational Funds and Programmes whereas only two services were outsourced by all of the Specialized Agencies.

Figure 1

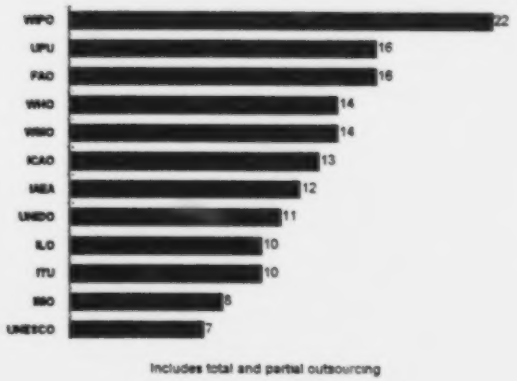
ADMINISTRATIVE/SUPPORT-TYPE SERVICES OUTSOURCED BY OPERATIONAL FUNDS AND PROGRAMMES AND BY SPECIALIZED AGENCIES AND IAEA IN 1995



18. Among the Specialized Agencies and IAEA, the extent of the use of outsourcing for administrative/support-type services appears quite varied. WIPO outsourced for all 22 of the services included in the annexed table. FAO and UPU were next, each with 16 outsourced services. UNESCO was at the other extreme with 7 services outsourced. However, despite WIPO and UNESCO being at the extremes, Figure 2 suggests there is no general relationship between the size of organizations and their use of outsourcing.

Figure 2

NUMBER OF ADMINISTRATIVE/ SUPPORT-TYPE SERVICES OUTSOURCED BY SPECIALIZED AGENCIES AND IAEA IN 1995



19. As was true for administrative/ support-type services, the Operational Funds and Programmes also used outsourcing for substantive activities more than did the Specialized agencies and IAEA (see top line of Section 6 in the annexed table). Only one (UNDP[5]) did not report outsourcing of any substantive activity compared to five of the Specialized Agencies. (WMO did not have the information available).

20. The substantive services which organizations of the United Nations system outsourced entirely or almost entirely are indicated in Table 1. This Table shows the broad range of substantive services that were outsourced in 1995.

Table 1

SUBSTANTIVE SERVICES OUTSOURCED AT 90-100 PERCENT BY OPERATIONAL FUNDS AND PROGRAMMES AND SPECIALIZED AGENCIES AND IAEA IN 1995

MAJOR SUBSTANTIVE ACTIVITIES OUTSOURCED AT 90-100 PERCENT	
PROGRAMMES	
UNICEF (HQ)	Market research and development
	Product development
UNFPA	Family planning
	Formulation and evaluations of population policies
	Data collection and analysis
	Population dynamics
WFP	Management reviews
AGENCIES	
IAEA	Expert advice on spent fuel storage
	Sample analysis
UPU	Development of the international postal system software
WIPO	Patent cooperation
	Madrid International Marks System

D. Lack of policy and institutional infrastructure

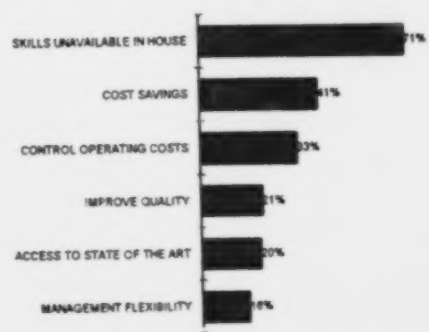
21. Despite the longstanding and widespread, albeit limited, use of outsourcing in the United Nations system, no organization had an explicit policy on the use of outsourcing when preparation of this report was begun. However, ITU and UNESCO were in the process of developing such a policy at that time. The ITU Council in 1996 approved in principle a policy on outsourcing that was confirmed by the Council in 1997.[6]

22. The United Nations and UNHCR each have internal documents directly addressing the practice of outsourcing.[7] However, rather than being statements establishing a policy and indicating the basic issues to be addressed in implementing the policy, these documents are more in the nature of detailed administrative instructions to be followed for procuring services from corporate contractors when the policy decision to outsource has been taken. The OIOS report (paras. 11-12) confirmed the lack of policy and guidelines for the United Nations.

23. The lack of explicit policy statements, except now for ITU, can result in the use of outsourcing in a relatively reactive and passive manner within the United Nations system.[8] This is consistent with the responses of the Specialized Agencies and IAEA and the Operational Funds and Programmes when asked to indicate deciding factors (more than one was possible) for each of their outsourcing contracts costing more than $100,000. As indicated in Figure 3, the leading deciding factor by a large margin for the System as a whole was "skills unavailable in-house," followed by "cost savings." Were there a more proactive approach to taking advantage of the challenge of outsourcing, consistent with the existence of explicit policy statements on this practice, one would have expected a higher ranking for factors such as "management flexibility," "access to state of the art," and "improve quality."

Figure 3

MAJOR OUTSOURCING CONTRACTS OF AGENCIES AND PROGRAMMES BY DECIDING FACTORS, IN 1995



Percentages do not add to 100 since organizations could identify more than one "deciding factor" for each major contract.

24. However, while these observations are valid for the System as a whole, there are notable exceptions for specific organizations. For example, "access to state of the art" and "improve quality" were deciding factors for all major UNDP outsourcing contracts, whereas "skills unavailable in house" was not reported as a deciding factor for any. For all major UPU and

IMO outsourcing contracts, "improve quality" and "management flexibility" were among the deciding factors, and "access to state of the art" was also for two-thirds of UPU's major outsourcing contracts. For FAO, although "cost savings" was the leading deciding factor, "management flexibility" was a deciding factor for two-thirds of its major outsourcing contracts and "access to state of the art" was a deciding factor for more than half of its contracts. These exceptions may indicate a more proactive approach to the use of outsourcing by some organizations.

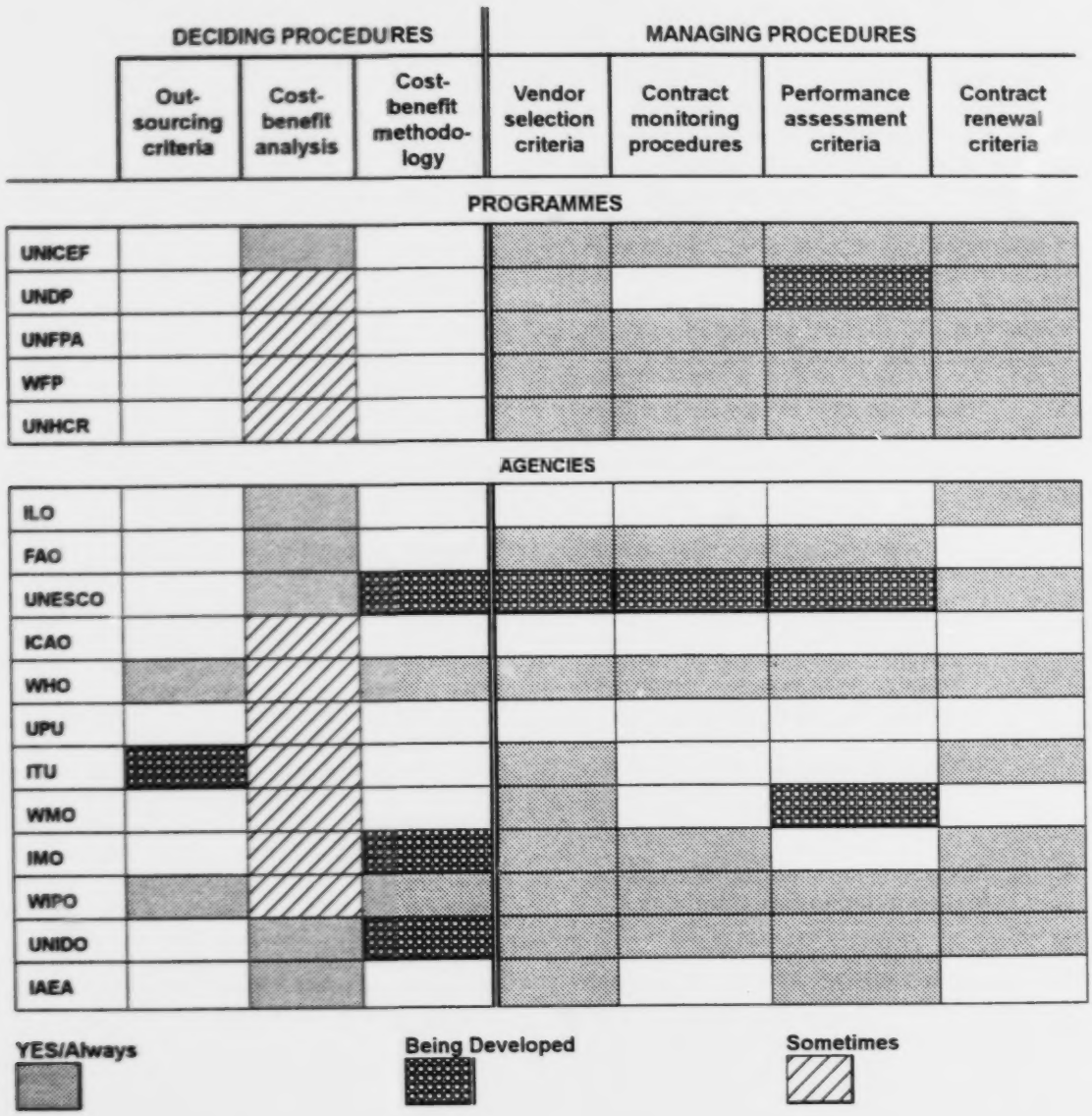
25. In order to get an indication of the extent to which organizations of the System have institutional infrastructure and/or established procedures for the use of outsourcing, the JIU questionnaire asked the organizations if they had or used seven specific kinds of procedures. Table 2 illustrates the comparative use of what could be considered, on the one hand, procedures related to **deciding** on the use of outsourcing; and, on the other, procedures related to **managing** outsourcing contracts.

26. Table 2 indicates that WIPO and WHO stand out in this regard. They both reported having six of the procedures, and "usually" or "always" using the seventh (cost-benefit analysis prior to deciding to outsource). (In regard to using cost-benefit analysis prior to deciding to outsource, it should be noted that six of the other organizations reported always doing so, and all of the rest reported they do so at least sometimes.)

27. For the System as a whole, especially for the Operational Funds and Programmes, there appears to be more emphasis on procedures for "managing" than for "deciding". This is consistent with the use of outsourcing by the organizations of the System as a whole in an ad hoc and pragmatic manner without an explicit policy on the use of outsourcing.

Table 2

THE USE OF "DECIDING" AND "MANAGING" PROCEDURES FOR OUTSOURCING BY OPERATIONAL FUNDS AND PROGRAMMES AND SPECIALIZED AGENCIES AND IAEA IN 1995



E. Conclusion

28. While outsourcing is a longstanding and widespread practice throughout the organizations of the United Nations system, it still is managed in most organizations in a rather ad hoc and reactive manner without being guided by an overall policy or strategic concept. As seen in the following chapters, this ad hoc approach without a policy can add to the problems of using outsourcing and reduces the ability to take full advantage of the challenge of outsourcing.

III. ADDRESSING POTENTIAL PROBLEMS OF OUTSOURCING

29. Concerns exist among Secretariat officials, staff members, and delegates of Member States regarding serious problems that could result from the use of outsourcing in the United Nations system. These are legitimate concerns that must be considered. Identifying the nature of such problems and ways in which they could be addressed is one purpose to be served by this report. Openly addressing the possibility of such problems, and being satisfied that measures can be taken to avoid them in each specific instance, is a critically important part of the process to be followed whenever the use of outsourcing is being considered by an organization of the United Nations system.

30. Three broad areas of potential problems exist in regard to the use of outsourcing in the United Nations system. These three problem areas are:

- Respecting the international character of United Nations system organizations;
- Assuring appropriate control and/ or management over the conduct of outsourced activities; and
- Avoiding negative impact on the affected staff of United Nations system organizations.

A. Respecting the international character of United Nations organizations

31. At the heart of organizations of the United Nations system is their international character. There is a concern among Member States that the use of outsourcing could compromise the international character of United Nations system organizations. To the extent that this is true, the very nature of the United Nations system would be put at risk.

32. The international character of the United Nations system organizations derives from the fact that they are composed of sovereign Member States. Article 2.1 of the United Nations Charter proclaims that, "The Organization is based on the principle of the sovereign equality of all its Members." This is a guiding principle which also is either similarly expressed, or strongly implied, in the basic documents or constitutions of the other organizations of the System. This principle leads to an important sense among the Member States of collective participation and shared responsibility on an equal basis for all decisions and actions of the organizations. Protecting the international character of United Nations system organizations is an important concern of Member States. For this reason, special care must be taken to avoid having the use of outsourcing – or any other measure intended to improve efficiency and economy in operations of the organizations – threaten to compromise the international character of United Nations system organizations. Even just a perception that such is the case would be damaging for the organizations.

33. Outsourcing can be seen as a potential threat to the international character of United Nations system organizations in two major ways. One relates to the displacement of the role of international civil servants in implementing activities and functions of the organizations as a result of outsourcing; and the other relates to the resulting possibility of significantly distorting in favour of host countries the geographic sharing of contracts.

34. Key to maintaining the international character of the United Nations system organizations is the independence and international outlook of the international civil servants responsible for implementing the activities and functions of the organizations, as determined by the appropriate legislative organs on behalf of the Member States. In accord with the United Nations Charter and comparable documents of the other organizations, the basic requirements for international civil servants are described most fully in a 1954 report of the International Civil Service Advisory Board that was prepared at the request of the ACC[9]. These requirements are, inter alia:

- an "international outlook" based on loyalty to the objectives and purposes of the international organizations, and the willingness of international civil servants to support the decisions of the international organizations regardless of their personal views; and
- independence in the sense of remaining independent of any authority outside of the organizations being served by the international civil servants.

35. Outsourcing, by definition, involves vesting some specified degree of responsibility for conducting particular organization activities and functions in individuals outside of the organizations. Being outside of the organizations means, of course, these individuals are not personally subject to provisions of the United Nations Charter or other comparable instruments, nor to Staff Rules and Regulations, and thus they have no inherent loyalty or accountability to any United Nations organization. In particular, they are not required to have the international outlook and independence of international civil servants. For this reason, there clearly must be certain kinds of core activities and functions that simply cannot be outsourced without significantly compromising the international character of United Nations system organizations. However, it would appear that there are, also, large ranges of activities and functions that can be outsourced, provided they are properly controlled and managed by internationally accountable officials.

36. Thus a first requirement for the use of outsourcing is to have a well founded basis for determining what kinds of activities and functions can be outsourced -- provided significant gains can be achieved by doing so -- and what kinds cannot be outsourced for important policy reasons, no matter what other gains may be possible by doing so. One obvious possibility is to exclude core activities and services from being outsourced, as is being given explicit consideration (at least internally) by some organizations, e.g., UNHCR and UPU. In any event, this appears to be the policy being followed in practice by United Nations system organizations, even if they do not have an official and documented policy on outsourcing.

37. Using core activities and services as the criterion for determining what can and cannot be outsourced has an inherent logic. Allowing core activities and services of an organization to be implemented by individuals who have no direct loyalty and accountability to the organization would call into question the need for maintaining the organization at all. However, while establishing in general terms the criterion that core activities and services are not outsourceable is valid and useful, it still must be applied in specific instances for each organization in order for it to become operationally meaningful. This requires careful consultations between Secretariats and the Member States of each organization, in the context of the historical experience of that organization and the substantive subject matter covered by its mandate.

38. The concern that outsourcing undermines the international character of an organization by significantly distorting in favour of host countries the geographical sharing of contracts is a difficult problem. While contractors from host countries may have an inevitable advantage in seeking contracts for outsourced activities and services, this advantage could and should be mitigated to a great extent by a much more rigorous application of existing requirements for assuring free competition through full access to open bidding in the letting of contracts. The recent OIOS report on a review of outsourcing practices indicates that in the United Nations the requirements for open bidding often have not been observed nearly as well as they should be.[10] Furthermore, thanks to information technology, a great deal of work that previously had to be done locally now can be done by contractors around the world. Ultimately, of course, while every effort must be made to assure openness of opportunity to bid on outsourcing contracts, it would be inequitable and damaging to the interests of United Nations system organizations to set Member State quotas for the awarding of outsourcing contracts that are incompatible with the results of fair competition.

B. Management and control aspects of outsourcing

39. Another important area of concern about the use of outsourcing relates to the danger of an organization losing its ability to maintain adequate management and control over the activities that have been outsourced.[11] In addressing this area of concern, it should be remembered that the performance of activities in-house does not in itself, of course, assure maintaining appropriate management and control. In fact, one advantage of actively considering the option of outsourcing is that it requires explicit attention on this issue that too often is not sufficiently addressed for activities performed in-house.

40. An overriding concern in this area is that an organization could become captive to the contractor providing the service. This could result from the organization becoming dependent on the contractor as it loses its in-house expertise and institutional memory regarding the performance of the outsourced activity. This dependency, in turn, could lead to the organization losing its ability to control costs and/or maintain quality standards regarding the

outsourced activity. It is possible that a contractor, after having won a contract on the basis of low bids, would take advantage of the organization's dependency to raise prices and/or lower the quality of performance.

41. Awareness of this possible problem and the need for measures to avoid becoming captive to the contractors often was expressed in interviews with officials of different organizations. For example, this concern was expressed explicitly in interviews with officials of, inter alia, UNDP, United Nations, ICAO, the Inter-American Development Bank, EU and ESA. They clearly understood the basic rule in the business world that, while a company or institution transfers to outside providers the execution of functions and activities formerly performed by its personnel, at the same time it must retain in-house sufficient professional capacity to monitor and control implementation of outsourcing contracts.[12] Alternatively to maintaining sufficient professional capacity in-house, if this simply is not practical, organizations could have access to expert advisory services to assist for this purpose.

42. Another major concern in this area is that the use of outsourcing could reduce an organization's flexibility and responsiveness to changing requirements, such as a sudden increase in workload, for example in translation services.[13] For such situations, provisions to assure sufficient flexibility to respond to changing requirements could and should be built into outsourcing contracts. Indeed, rather than reducing an organization's flexibility and responsiveness, outsourcing could serve as an important means to increase flexibility and responsiveness. Outsourcing would allow an organization to shift its resources as changing times may require rather than have them pre-committed to staff and/or equipment that no longer is needed.

43. Exposing an organization to the risk of strikes and other problems of industrial relations is another concern often expressed about the use of outsourcing. While this is a possible problem, it is one that can and should be dealt with by appropriate compensation provisions built into the outsourcing contracts. Such provisions would shift the risk and cost of industrial relations problems to the contractor rather than the organization.

44. Finally, there is the concern that the use of outsourcing makes an organization vulnerable to instances of bribery, kickbacks and other related forms of corruption. This is not a problem created by the use of outsourcing since, even in the absence of outsourcing, any organization must have adequate internal controls and oversight mechanisms to avoid such problems. The use of outsourcing, in fact, reduces the number of staff and situations requiring oversight and focuses attention on those instances where oversight is most required.

45. It would be unwarranted to try in this report to provide a detailed manual on how to deal with all the risks of losing management and control over outsourced activities that an organization could face. They clearly must be addressed by senior management, in relation to each organization's operating practices and specific mandates, if Member States are to have the confidence they need in the use of outsourcing. An obvious starting point would be a good understanding of the risks and, in general terms, careful observance of good management practices.

46. Central in dealing with problems such as these is assuring that all concerned -- the organization's senior management, the Member States, and the contractors providing the outsourced services -- fully understand that the officials of the organization ultimately remain accountable for the services or activities that have been outsourced. In the words of the World Bank's policy statement on outsourcing:

> Crucial to a successful outsourced arrangement is full recognition that outsourcing does not relieve the Bank's manager of responsibility. That manager remains fully accountable for performance, the only difference being that he/she deals with a contractor instead of individual staff.[14]

C. Impact on staff

47. The possible negative impact on staff is another very difficult area of concern to address in regard to the use of outsourcing by United Nations system organizations. While this understandably is a matter of very great concern to staff members of the Secretariats, it should be noted that their commitment to the ideals and purposes of the United Nations mean they also in large measure share the other concerns already discussed that do not so directly affect their personal welfare. The concerns of staff members, regarding both their own welfare and the interests of the United Nations system overall, are expressed in a thoughtful position paper on

outsourcing presented by the New York Staff Union at the Staff-Management Consultative Committee in August 1996. It should be noted that this position paper explicitly indicates the staff recognize the need for outsourcing provided certain reasonable conditions are met.[15] The concern about possible impact on staff is not restricted just to Secretariat staff members. There are Member States who feel an obligation toward protecting the well deserved interests of long serving Secretariat staff members. Within this area of concern, the following are the key problems to be addressed.

48. Loss of jobs. The need for achieving cost reductions often has been one of the driving forces behind outsourcing decisions. Since personnel expenditures are such a large share of total expenditures in the United Nations system, an overriding concern in this area is the possible loss of staff positions as a result of outsourcing. The personal hardship resulting from the possible loss of jobs always is a most difficult problem in any potential outsourcing situation. It is much more difficult for affected staff of United Nations system organizations because so many, in addition to losing their jobs, would not have the right to accept positions in the same locale, or even same country, outside of the United Nations system organizations.

49. It would be unrealistic to say the use of outsourcing never results in personnel being left without appropriate employment within their organization. Clearly, however, every effort should be made to avoid such a result. Individuals and their families should not have to experience great personal hardship as a result of a decision to outsource a specific service or activity. Such individuals presumably accepted their positions in an organization of the United Nations system, and made the personal commitments and investments required to take those positions, on the basis of reasonable assumptions about their expected tenure.

50. It could be that, due to poor management decisions long ago, the activities to be outsourced never should have been performed in-house and, thus, the positions now at risk never should have existed. Alternatively, there may have been technological or other developments related to the work at issue that now result in a decision to outsource. Individuals should not be penalized for past mistakes of management that now are being corrected, or for technological and/or other developments related to their work beyond their control. For these reasons, as recommended in the Executive Summary (**Recommendation 5**), the Executive Heads of participating organizations should make every effort to avoid negative impact on staff affected by decisions to outsource specific activities, e.g., by using attrition to accomplish the transition, or training in alternative areas of work. For situations when negative impact on staff is unavoidable, the Executive Heads should prepare measures, for approval at the appropriate level, which would assure appropriate protection for those affected.

51. In addition to the legal rights and protection available to staff members under Staff Rules and Regulations, there also is a moral and ethical obligation by management and the Member States to avoid as much as possible imposing personal hardship on staff members and their families as a result of decisions to outsource. More than just strict adherence to existing rules and regulations is required; an extra effort based on a real commitment to protecting legitimate interests of staff must be expected. In this regard, the United Nations Assistant Secretary-General responsible for the Office of Conference and Support Services gave to staff members in September 1996 the assurance that in his organization "nobody had been separated because of outsourcing."[16] It is reassuring to see that in 1995 for the organizations covered in the table annexed to this report, only one staff contract (in ILO) had been terminated due to outsourcing.

52. Regarding the possible problem of jobs being lost due to outsourcing, one option would be for an organization to encourage the use of ex-staff members as potential vendors/providers for the organization's outsourcing contracts, subject to the ex-staff members satisfying the same criteria as other contract bidders. This could have many advantages for the organization, including the retention of skills and experience which would be difficult to match in the outside labour market. The relatively high cost of separating regular staff would make it worthwhile to explore opportunities for mutually beneficial arrangements. For example, the organization could act as a venture partner for a year or two while the outsourced business was being established in exchange for staff members agreeing to waive their separation benefits. The experience with this option of other organizations (including those in the private sector) should be examined to see if it could be employed usefully by the United Nations system organizations.

53. Heavier workload. Another concern in this area is that outsourcing can result in a heavier workload for the reduced staff remaining with the organization. For example, the previously mentioned position paper on outsourcing issues of the New York Staff Union noted an instance of this happening in a division of the Secretariat that had reduced maintenance staff to take advantage of temporarily lower outside contractual costs.[17] As the costs for the contractor rose – a common tendency which must be guarded against in the negotiation of an outsourcing contract – the contractual work became increasingly shoddy. The result was that the fewer in-house staff remaining had to make up for this shoddy work which led to their workload increasing so significantly that the day-to-day maintenance for the Secretariat deteriorated.

54. Since the purpose of outsourcing is to transfer to an external contractor the performance of specified activities or services, any resulting increase in workload for the remaining staff – as happened in the situation described by the New York Staff Union – must be the result of a poor outsourcing contract. It could be that, for example, an outsourcing contract fails to specify adequately what is expected from the contractor, with sufficient compensation clauses to assure timely performance by the contractor, or it is based on a misconception of what is actually required in regard to the outsourced activity or service. The importance of assuring good and comprehensive contracts, and of devoting full and qualified attention to their implementation, cannot be over emphasized. Thus, while the problem of outsourcing leading to a heavier workload for remaining in-house staff is a serious one that must be avoided, it is a problem to be addressed in negotiating and managing outsourcing contracts rather than one inherent in the use of outsourcing itself.

55. Damaging the image of the international civil service. There is a concern that the image of the international civil service can be, and has been, damaged as a result of wrongful acts committed by external contract personnel. For example, the New York Staff Union position paper on outsourcing notes in this regard cases of sexual harassment, inadequate pay, and criminal acts by contractors performing work at the United Nations. Apparently, there is the feeling that the public is unable to distinguish between international civil service staff and external contract personnel with the result that any wrongful acts committed by personnel doing work for United Nations system organizations are attributed to members of the international civil service.

56. For preparation of this report, this issue was discussed with representatives of the New York Staff Union. One example of this kind of concern mentioned in these discussions relates to the risks associated with the outsourcing of security services by United Nations system organizations, which is happening in a number of different locations. In these discussions, the point was made that in New York City various security services are employing persons who are on parole. Another instance noted was an attempt in Nairobi to use outsourcing in conference services for personal profit. There also was the case documented in a report by the Office of Internal Oversight Services regarding the United Nations gift centre in which the Organization was unable to replace a manager responsible for mismanagement of the gift centre, an activity which had been outsourced.[18] Having this sort of people associated with work being done for United Nations system organizations inevitably risks damaging the image of the international civil service.

57. This sort of problem clearly has to be avoided, but the issue again relates to negotiating and managing the outsourcing contract rather than the basic practice of outsourcing itself. Outsourcing contracts must contain provisions establishing basic safeguards and giving the organizations appropriate controls sufficient to prevent or correct quickly any situations damaging to the United Nations organization involved and, thereby, to the image of the international civil service. Although an activity or service might be outsourced, as indicated previously, the organization management still remains ultimately responsible and accountable for the performance of that service or activity and must have the rights under the contract to enforce that responsibility. They also must have the in-house determination and capacity to implement those rights. Some situations could warrant that the outsourcing contractor be obligated to make bank deposits that would serve as a guarantee to compensate, and even pay an added penalty, for possible losses and damages caused by the contractor's employees.

58. Deny or diminish training and retraining opportunities of staff. To the extent that services or activities are outsourced to external contractors, there would be less need for general training of in-house staff regarding those services

or activities. Thus, there is the concern that outsourcing could lead to less training opportunities for in-house staff. However, in order to help to avoid negative impact on staff affected by outsourcing decisions, management should where possible provide appropriate training opportunities to allow such staff the possibility of transferring to another area of work within the organization where there is need for more staff. This means that correctly pursuing a policy of increased consideration of outsourcing should lead to more rather than less training opportunities for potentially affected staff.

59. Furthermore, there would remain the need for retaining in-house, as discussed above, sufficient expertise to manage and supervise the outsourcing contract(s) for the specific activities or services at issue. As one United Nations official noted, the staff would need to do "less rowing and more steering." This means that outsourcing could require a higher level of training regarding those specific services or activities for at least a few in-house staff. One example of the kind of training program that would be especially appropriate is the training in contract administration now being pursued by UNOPS and UNDP.[19] The International Training Centre for the International Labour Organization (Turin Centre) has training workshops in procurement management, in World Bank procurement guidelines, and public procurement for development projects, which can be useful to staff who become heavily involved in managing and monitoring procurement contracts.

60. Demoralization of staff at large. A very dangerous problem that could develop in an organization, as it goes through a transition to more active consideration of the use of outsourcing, is the demoralization of staff at large. This can have a crippling and long lasting effect on productivity extending well beyond the services or activities being outsourced. However, this problem is more a matter of how the management of an organization handles the issue of outsourcing rather than one inherent in outsourcing itself.

61. Key to avoiding this problem is management being fully open and transparent with staff about plans for outsourcing and the likely impact on staff, both good and bad, as early as possible. As long as there are just rumours about the possibility of outsourcing, many more staff than those most likely to be affected will feel threatened and the perceived threats often will be greatly exaggerated. Were this to persist for long in an organization, it would have a very damaging effect on morale. For those to be affected, it is especially important that they be as well informed as possible, and as early as possible, so that they can make plans to take care of themselves and so that their fears are not exaggerated. A well managed transition to outsourcing should allow affected staff to discover benefits for themselves, such as new career opportunities, instead of just risks and problems. In any event, the morale of other staff would be improved if they can see that the affected staff are being treated with respect and consideration in a fully open manner.

62. In fact, outsourcing can have important positive aspects for staff which should lead to improved morale. The proper introduction of outsourcing should bring in healthy competition, new and updated technology, and state-of-the-art working practices, which should have a stimulating effect for staff. Especially of benefit to the staff is the fact that outsourcing can lead to greatly enhanced interaction with outside providers of services which creates for staff more opportunities for access to modern technology and new management practices. It also provides them with opportunities for updating their professional skills and thereby giving them the possibility for increased job mobility. They thus could avoid feeling stranded for the remainder of their careers in their current jobs.

63. Overall, in dealing with the impact on staff of outsourcing, the importance of management maintaining close and frequent consultations with staff is clear. It is critically important to dispel worries, concerns and misunderstandings as much as possible. Also, close consultations with staff can assist greatly in making the decisions on outsourcing and in monitoring those services and activities that have been outsourced.

IV. THE NEED FOR A POLICY ON OUTSOURCING

64. If outsourcing has been used by the organizations of the United Nations system since even before the United Nations was founded, why is there a need for a policy on outsourcing? Following a practice without the benefit of being guided by a policy can result in unnecessary risks and problems for the organization. In addition, having a policy would better assure taking advantage of the significant benefits that can be gained by outsourcing. This chapter discusses these matters and concludes by describing the basic components of a policy on outsourcing.

A. Risks and problems without a policy

65. The overview of outsourcing in the organizations of the United Nations system in Chapter II described the existing lack of an adequate institutional infrastructure for the management of outsourcing. In the absence of an explicit policy on outsourcing, there is no real basis on which to establish the necessary institutional infrastructure. Doing so would involve, rather than adding staff, establishing appropriate generalized guidelines, standards, and procedures to apply in handling outsourcing issues and, even more important, assuring that the staff concerned have experience and expertise in this area. Some of the more significant problems that can result from not having a policy follow.

66. Lack of transparency. A very basic need for a policy is to assure more appropriate transparency for a significant practice that is being implemented increasingly throughout the system without explicit recognition. More transparency would serve to make the practice, and what it is supposed to achieve, more clear to Member States and staff. In turn, this would better assure proper accountability for those implementing the practice, since an explicit policy would provide an informed basis on which Member States could judge how well it is being implemented.

67. Need to re-invent each time. The OIOS report on outsourcing expresses the view that "the lack of policy guidelines has contributed to inconsistent outsourcing approaches throughout the Organization", with "a critical impact on both costs and the quality of services provided."[20] With no existing infrastructure explicitly for outsourcing on which to draw, each potential instance of outsourcing requires the organization to "re-invent the wheel", i.e., develop standards and procedures for making the decision to outsource, for formulating the contract, for requesting and deciding on bidders for the contract, and for managing implementation of the contract, including evaluation of the product received and deciding on rebidding or renewal of the contract. In addition to wasting time and effort, this foregoes an opportunity to build up a reservoir of lessons learned and thereby risks repetition of past mistakes.

68. Different environments for outsourcing. The fact that the organizations of the United Nations system operate world-wide means that they operate in very different environments, with different risks and problems for which appropriate precautions are required. Although the use of outsourcing is highly location-sensitive, having an established policy on the matter would help to set standards and guidelines for better assuring an appropriate consistency in addressing these different environments.

69. Reduced basis for coordinating and sharing of experiences with other organizations. The final chapter of this report includes discussion of the benefits to be gained by coordinating and sharing experiences with other organizations in regard to outsourcing. However, without a defined policy and identified institutional infrastructure, it would be most difficult to specify exactly what needs to be coordinated or who should seek such coordination.

70. Unease/distrust among staff and Member States. The issue of outsourcing can be controversial among both staff and Member States because of the potential problems of outsourcing, as discussed in Chapter II. The level of controversy, and resulting unease or distrust among staff and Member States, would be at least partly the result of uncertainty about the issue. The existence of an explicit policy on the use of outsourcing would reduce this uncertainty and thereby help to defuse unnecessary controversy. While specific proposals for outsourcing still could be quite controversial, the controversy would be more appropriately focused on real concerns. Thus there would be more chance of avoiding a pervading unease and distrust about the issue that can be damaging to the productivity of staff and the general spirit of cooperation among Member States toward achieving the goals of the organization.

71. Increased likelihood and difficulty of potential problems of outsourcing. The potential problems of outsourcing were identified in Chapter III. As indicated, these significant problems can and must be addressed. However, the difficulty of doing so is increased by the absence of an explicit policy. The current ad hoc approach to outsourcing means there are no fixed and agreed criteria to apply in identifying activities and services appropriate for outsourcing that would assist in assuring respect for the international character of the organizations; experienced staff with expertise and institutional memory are not available to help overcome the problems of maintaining appropriate management and control over outsourced activities and services; and there are no standards and procedures ready to assist in protecting staff from the possible negative impact on them of outsourcing.

72. Unfair exposure of staff to risk. It is unfair to put staff in situations where they have to take actions without the benefit of an explicit policy to guide them. In view of the controversial nature of outsourcing, there is all the more need for a policy to give staff the coverage they deserve.

73. Reactive approach to outsourcing. Not having an explicit policy on the use of outsourcing could result in its use in a reactive or passive mode when forced or suggested by other circumstances. As discussed below, this approach results in failing to take full advantage of the benefits of outsourcing.

B. Benefits of having a policy on outsourcing

74. In addition to helping to avoid the problems and risks of not being guided by a policy, making use of outsourcing in a planned and intentional manner would better assure taking advantage of the benefits to be gained. This means the current passive and reactive approach to the use of outsourcing, that too often is the pattern now in United Nations system organizations, must be replaced by a pro-active and positive approach. In other words, the organizations of the United Nations system need an explicit policy to welcome the challenge of outsourcing.

75. Catalyst for continuing improvement. The organizations of the United Nations system are facing now, as they have periodically in the past, strong calls for reform. Reform by its nature tends to be thought of in terms of a one-time, albeit often large-scale, improvement. Reforms with an ongoing effect have obvious advantage. A policy to welcome the challenge of outsourcing could be an important way to institute an ongoing reform process.

76. Continuing reform and improvement requires building into the management culture of an organization incentives for that purpose. A policy of welcoming the challenge of outsourcing would accomplish this by building into an organization a concern for cost-effectiveness and an openness to innovation. Because of the discipline of the marketplace, the competition that results from the challenge of outsourcing would encourage both management and staff to search for means to achieve effectiveness with reduced cost which, in turn, would lead to a search for innovation. In this way, a documented policy of welcoming the challenge of outsourcing would serve as an ongoing agent or catalyst for positive change in the organizations of the United Nations system.

77. Focus on needs, alternatives, and levels of quality. Having to face a market situation forces concentration on determining whether a specific activity or service is really needed; the identification of different alternatives for performing it, and their cost implications; and the level of quality for the activity or service that in fact is required. As suggested in an Economic Intelligence Unit (EIU) study, "It's one thing to ask an in-house function to perform a task, seemingly at no cost; it's quite another to ask a provider who will charge."[21]

78. User orientation. In terms of effectiveness, active consideration of the use of outsourcing also has the advantage of leading to more focus on user or customer needs. Since in-house functions tend to be monopolies, those responsible too often are more concerned about maintaining their own dominance rather then fulfilling the needs of their users. Being forced to compete with external providers often rapidly leads them to make improvements in the quality, delivery and costs for their service or activity.[22] The continuing presence of competition means the increased orientation toward user needs also will continue.

79. Keeping pace with best practices. Organizations can become too inwardly focused and stagnant when functions are performed without question in-house. An active commitment to considering the possibility of outsourcing helps to overcome this limiting tendency. The prospect

of competition encourages both management and staff continually to be open to and seek innovation. This outlook by both management and staff is required in order for an organization to become familiar with best practices and take advantage of them.

80. Readiness for change. Related to this, the use of outsourcing can be an important means for allowing flexibility to cope with change and gain access to the specific expertise necessary for meeting changed circumstances or new requirements for growth. Outsourcing means an organization is not burdened with maintaining expensive expertise established to meet yesterday's needs; rather, the organization can redirect its resources to assure the expertise required for today.[23]

C. Components of a policy on outsourcing

81. At this stage, it is important to remember a central point made in the introduction of this report. In calling for an explicit policy on the use of outsourcing, it must be clear that there is absolutely no intention to pre-judge whether or not any specific activity or service should be outsourced. The benefits to be gained are not dependent on activities and services necessarily being outsourced. Rather, the key point is that the benefits to be gained would derive from taking advantage of the competition that results when active consideration is given to outsourcing as an option for performing a specific activity or service.

82. The parameters of competition would depend on the nature of the activity or service concerned and the interests of the organization in considering outsourcing for it. Cost would be an important factor to consider but certainly not the only factor, and not necessarily the most important factor.[24] Other factors to consider in the competition could include the availability of necessary skills, the ability to assure control over costs, improvements in the quality of the product, access to state of the art technologies and expertise, and flexibility to meet changed situations.

83. In any given instance, the in-house staff could win the competition and continue to perform the service or activity. Furthermore, management could decide to test the possibility of using new or re-deployed in-house staff to replace an external provider when an outsourcing contract previously won by an external provider is up for renewal. In such cases, the in-house staff would have to demonstrate that they have a capacity for performing the service or activity superior to that of external providers, possibly because they have improved their productivity so as to make their capacity superior to that of competing external providers. Such productivity improvements often result in cost savings of as much as 30 percent for national government services.[25] Whatever the result, whether the competition is won by the in-house staff or an external provider or some combination of the two, the organization gains by more cost-effective performance because competition has placed priority on finding the most efficient means of performance.

84. In this regard, the World Bank policy document on outsourcing suggests the use of the word, "sourcing," which they define "as a 'neutral' term that encompasses all sources for delivery of products and services, including in-house, outsourced and all other intermediate arrangements."[26] One of the attributes of their suggested outsourcing policy is that it considers "outsourcing" as one of a number of options in the broader context of "sourcing."[27] This helps to make the central point that the key is not necessarily to outsource, but to make use of the competition that results from the challenge of outsourcing.

85. As called for in **Recommendation 1** in the Executive Summary, the key components of a policy on outsourcing -- to be prepared by each of the Executive Heads, for approval at the appropriate level according to the working methods of each organization -- would be:

(1) a statement committing the organization to the use of the challenge of outsourcing as a means for achieving improved cost-effectiveness in both their administrative/support-type and substantive operations;

(2) criteria for determining what current and planned activities should be considered for outsourcing; and

(3) measures to assure that outsourcing will not compromise the international character of the organization.

86. A possible addition to this policy would be provisions to give a defined degree of preferential treatment for bidders from the least developed countries, in Africa especially, in the award of outsourcing contracts. The idea of

preferential treatment for less advantaged countries has been used by UNDP, UNHCR and UNFPA in their procurement practices. They allow a specified margin of increased prices for services provided and goods produced by locals in support of the execution of projects in developing countries.

87. Taking into account the United Nations System-Wide Special Initiative on Africa, United Nations system organizations might want to include in their policies on outsourcing acceptance of bids on contracts from local providers (i.e., companies employing mainly African labour or owned by Africans) that exceed within a specified range (e.g., 10 - 15 percent) lowest bids from others. There should be, however, a proviso that quality of goods and reliability of services must comply fully with the organizations' standards. Also, appropriate changes may be required in an organization's financial regulations and rules, e.g., financial rule 110.21 of the Financial Regulations and Rules of the United Nations. The objective of this exception would be -- however small and symbolic -- a message that the United Nations system organizations are supportive of measures aimed at the economic recovery of Africa.

88. For implementation of this policy, again as indicated in the Executive Summary (**Recommendation 2**),the Executive Heads of participating organizations should prepare, for approval at the appropriate level, administrative rules and/or procedures that would, inter alia:

(1) guide implementation of the criteria approved for determining whether or not an activity or service should be outsourced;

(2) assure that the organization maintains appropriate monitoring, evaluation and management control over outsourced activities; and

(3) improve cost-accounting practices in order to provide a better basis for deciding on the merits of outsourcing in specific instances.[28]

89. It goes without saying that fair and effective implementation of this policy requires full commitment to measures to assure free competition for all interested parties. There must be full information and access to unrestricted, open bidding on all contracts for providing goods and services.

90. In establishing policies and regulations on outsourcing, it would be most beneficial for the staff to play an important participatory role through active consultation in key stages of the exercise. They have much to offer on the basis of their experience and their active support for the policy would be important for assuring its success.

V. MAKING THE CHALLENGE OF OUTSOURCING WORK

91. Spelling out a policy and getting it duly approved is an achievement. Making it work is what counts. Making the challenge of outsourcing work will require special attention because of the controversy surrounding the issue. Four specific suggestions would better assure the success of this policy:

(1) The transition to implementation of the policy must be handled as quickly as possible and with as full communication as possible;

(2) A senior level "Facilitator" should be identified to assure follow through and well orchestrated implementation of the policy;

(3) The organizations of the System should develop and use mechanisms for coordinating and sharing experiences regarding their efforts in outsourcing; and

(4) There should be a scheduled review and evaluation of implementation of the policy three years after it has been approved.

A. Speedy transition with full communication

92. Managing the transition to implementation of a policy on the challenge of outsourcing is critically important for the policy's success. When managed poorly, not only is the success of the policy made unlikely, but serious and long-lasting damage to staff morale will result with obvious implications for organization productivity.

93. The above mentioned Economic Intelligence Unit (EIU) study on outsourcing notes that "Technical issues tend to receive the bulk of attention, but it is the human-resources issues that will largely dictate the success or failure of an outsourcing project."[29] This is an especially important point for organizations of the United Nations system since their predominant resource is people.

94. The same study cautions that, "It is important to keep in mind that the entire workforce will be watching management's treatment of fellow employees. It is imperative that company management treat all affected employees fairly and with integrity." It goes on to urge the critical importance of communication and the fact that all in the company "must have a clear understanding of why the particular function is to be outsourced and how that decision will affect the various employees."

95. In regard to how quickly and broadly an analysis of possible outsourcing should be communicated to staff, the study indicates there is some difference of opinion, although it suggests this should be determined by "the individual culture of each company." While some fear the negative consequences of too many people knowing too soon, others argue there is no way to keep such a possibility secret and it is better to be fully transparent in such a matter and make the announcement "right up front." The latter is the obvious choice for the United Nations system in view of the brief half-life of secrets in United Nations system organizations.

96. While a transition period is difficult and risky, one that is well executed can even result in higher morale for those remaining, provided they feel they have been handled with fairness. Presumably this is most likely to be accomplished in organizations that have an explicit policy on the use of outsourcing.

B. The role of a "Facilitator"

97. Outsourcing is widespread throughout the United Nations system, but no organization has an official with responsibility explicitly for overseeing and assisting in the use of outsourcing. Of course, without an explicit policy on outsourcing, there would be no basis for assigning such responsibilities to an official.

98. With approval of a policy on the use of outsourcing, as recommended in this report, assigning responsibility for overseeing implementation of this policy would assist greatly in successful use of the policy. In fact, there would be little prospect of taking full advantage of the policy without assigning such responsibilities to a senior official. Whether or not an official would have to spend full-time on this responsibility would depend on the organization, especially its size, and the nature of its use of outsourcing.

99. In assigning this responsibility to an official, however, it is important to avoid creating a "Czar" that would add just another layer of bureaucracy and possibly interfere with the work of operating units. It must be remembered always that outsourcing is a means to an end

and not an end in itself for an organization.

100. As indicated in the Executive Summary, **Recommendation 3**, the Executive Heads of participating organizations should prepare, for approval at the appropriate level, changes in the structure and/or operating procedures of their Secretariats to facilitate and encourage the best use of the challenge of outsourcing.

101. In developing proposals for such possible changes, serious consideration should be given to drawing from the excellent, time-tested example provided by a position that has been established in CERN. Dating as far back as 1989, CERN has followed a policy of concentrating its staff in what are now considered "core" activities and outsourcing other activities to specialist firms or organizations.[30] The position of Manager for Industrial Services was established to serve as what amounts to a "Facilitator" for outsourcing at CERN. The incumbent, who holds a very senior level position within the Secretariat and is a highly respected scientist, describes his role as that of persuading and encouraging those responsible for specific projects and activities to give the use of outsourcing in their areas serious consideration. He does this by such things as developing new ideas and ways to consider outsourcing, developing new ways to think about CERN functions and activities that outsourcing might make possible, assisting in making contacts with industry, and devising solutions to difficulties that might appear to block the use of outsourcing. He believes that the "service" he provides must be perceived by the managers of the user divisions as giving added value to their role and responsibilities.

102. In fact, his official mandate gives him authority well beyond that of just persuading and encouraging, e.g., authority to decide the type of work to be outsourced; to establish the desirability and form of a contract for services; and to define selection criteria for firms. In performing these responsibilities, he chairs an Industrial Services Committee that includes all User Divisions and representatives of the administrative services concerned. Probably most important, in terms of formal mandate, he has direct access to the Director of Administration -- outside of the normal lines of authority for the CERN Division Leaders upon whose cooperation his outsourcing efforts are dependent.

103. However, if the Manager of Industrial Services ultimately cannot persuade the Division Leaders responsible for the projects and activities to use outsourcing, the formal authorities he has would not count for much. Even his direct access to the Director of Administration would not be sufficient, although it does mean the Division Leaders know they have to take him seriously.

104. Clearly the CERN example deserves careful consideration. In following this example, however, note must be taken of the importance of personal effectiveness as compared to official authority. While the formal mandate of the position must provide sufficient authority, including especially a strategic position in the structure of the Secretariat, it certainly appears that a "Facilitator" would be more effective than a "Czar." In considering the possibility of establishing the position of a "Facilitator" for each of the organizations of the United Nations system, note should be taken of a similar recommendation for the United Nations in the OIOS report on outsourcing.[31]

C. More coordination through information sharing and joint actions

105. Outsourcing is one of those practices that would lend itself to effective coordination among the organizations of the United Nations system. A previous JIU report [32]pointed out that coordination among United Nations system organizations works well when mutual interests are perceived, which would be the case in regard to outsourcing, since the benefits to be gained from coordination are so apparent. As noted earlier (Chapter IV A), however, the absence of an explicit policy on outsourcing and an identified institutional infrastructure for managing it can make coordination difficult, since it would be unclear exactly what should be coordinated or who should seek such coordination.

106. There are strong legal grounds for such coordination. The relationship agreements between the United Nations and the specialized agencies, as well as a number of agreements concluded among specialized agencies, contain a standard clause on cooperation and exchange of information, inter alia, in administrative matters, which certainly applies to outsourcing activities.

107. At recent sessions of the Consultative Committee on Administrative Questions (Financial and Budgetary Questions), an agenda item on productivity improvement has included discussion of matters such as travel arrangements, information systems development, auditing and accounts examination, and conference services which provided opportunity for exchanges of information on outsourcing. Nevertheless, more focused inter-agency action on outsourcing would be useful.

108. Therefore, **Recommendation 6** in the Executive Summary calls for the United Nations General Assembly to request the ACC, making use of the existing ACC machinery, i.e., CCAQ (FB), to encourage further coordination on outsourcing among United Nations system organizations by developing a system-wide definition of outsourcing and through the sharing of information and the exploration of possibilities for joint actions in the use of outsourcing.[33] Some examples of information sharing that could be productive would include:

- rosters of contractors in different fields, with evaluations of their performance so that poor performers are not "recycled" in the System;
- data bases on costs for different services by different contractors;
- cost-accounting methodologies such as those used by ITU and UPU;
- methodologies for conducting cost-benefit analyses to compare the costs and benefits of outsourcing versus keeping activities in-house, and specific analyses that may be of common interest;
- generic standardized contracts to cover jobs or activities common to most United Nations organizations, subject to scrupulous review and updating;
- procedures for formulating contracts and suggested formats; and
- case histories of how specific risks and problems have been handled.

109. Some examples of joint actions that could be productive would include:

- the development of common definitions and terminology for outsourcing that would make information sharing, comparative analysis and other joint actions easier and more productive;
- joint contracting for services to gain the benefit of economies of scale and increased bargaining power; and
- training seminars regarding various aspects of outsourcing.

D. Implementation review and evaluation

110. Making a policy work, and being sure that the policy is achieving the objectives expected when the Member States approved it, requires (1) good reporting and transparency from the Secretariat throughout implementation of the policy; and (2) a carefully structured review and evaluation in depth, once the policy has been implemented long enough to provide a meaningful basis for such a review and evaluation.

111. **Recommendation 4** in the Executive Summary calls for the Executive Heads of participating organizations to assure that information on the use of outsourcing is comprehensive and transparent in the regular programme budget submissions and performance reports. As stated before, this is critically important for providing the Member States with the basis for reaching informed judgments on the effectiveness with which the policy is being implemented.

112. Finally, and most importantly, **Recommendation 7** in the Executive Summary, calls for the legislative organs of each of the organizations to schedule a review and evaluation of the implementation of the policy on outsourcing three years after it has been approved. For this purpose, the Executive Heads would be requested to submit a report on implementation of the policy that would indicate, inter alia, savings and/or benefits achieved, special problems encountered, solutions attempted and proposals for appropriate improvements. Three years should be enough experience to provide a meaningful basis for such a review and evaluation; practices would not have become so well established that required corrections would be too difficult to make.

113. Because of controversies surrounding the issue of outsourcing, there may be a tendency for legislative organs to practice micro-management in overseeing implementation of the policy. The call for a scheduled review and evaluation of the approved policy on outsourcing is intended to help avoid this. Making a success of this policy, especially because of the controversy it may generate, will require an appropriate relationship of confidence and accountability between the legislative organs and the Executive Heads. The legislative organs must have confidence in the Executive Heads to use appropriate discretion in testing different measures to suit the practical situations that will develop. The Executive Heads, in turn, must understand that by a time certain they will be held fully accountable for what they have done, or not done.

114. As recommended in this report, each Executive Head of an organization would be requested to prepare, for approval at the appropriate level, a specific policy statement on the use of outsourcing for the organization. The Executive Head then would have the responsibility for implementing the policy. After three years of experience with the policy, the Executive Heads would be expected to provide a comprehensive report on implementation of the policy for review and evaluation by the appropriate legislative organ. By this means, the Executive Head would be given the freedom and discretion required for effective development and execution of the policy, and still would be held fully accountable for actions taken.

115. Taking advantage of the challenge of outsourcing would help instill in the United Nations system a continuing search for the increased effectiveness of operations required to meet the growing needs and expectations it faces.

Notes

1. The Report of the Office of Internal Oversight Services on the review of outsourcing practices at the United Nations (Annex to A/51/804, para. 13) makes the point that "there is no standard operational definition for 'outsourcing' within the United Nations". UNESCO is one organization that has prepared a definition of outsourcing, as follows: "Contracting out work for which the Organization may possess the necessary expertise or resources, but which can be done less expensively, more efficiently or expeditiously by an outside body;" see UNESCO 28C/INF 8.

2. In developing a system wide definition of "outsourcing," it would be useful also to give attention to definitions for possibly related terms such as "core" and "non-core" and "substantive" and "non-substantive".

3. See Common Services at United Nations Headquarters (JIU/REP/96/5). Another JIU report on Common Services at the United Nations Office in Geneva is forthcoming.

4. UNDP's response to the JIU questionnaire was restricted to expenditures from its administrative budget.

5. As previously indicated, UNDP's response to the JIU questionnaire was restricted to expenditures from its administrative budget.

6. In the Report by the Chairman of ITU-2000 to the ITU Council (C97/29-E, para. 81, Recommendation 19), it states that "it is recommended that ITU products and services should be outsourced where significant cost savings would result, consistent with the wishes of the membership on quality, flexibility and timeliness of service delivery, and that the staffing level should reflect the minimum requirements."

7. For the United Nations, ST/AI/327, is an Administrative Instruction to Members of the Staff for Institutional or Corporate Contractors. For UNHCR, IOM/4/96, is an inter-office memorandum outlining the procedures governing procurement of services from institutions or corporate bodies.

8. In the OIOS report on outsourcing, (A/51/804, para. 16), the point is made that, "In the current situation, ... outsourcing is too often employed as a 'reactive' management strategy to supplement limited personnel resources".

9. "Report on Standards of Conduct in the International Civil Service 1954", International Civil Service Advisory Board, (COOR/CIVIL/5) paras. 5- 7.

10. A/51/804, paras. 24-63.

11. In paragraph 72 of the OIOS report on outsourcing it strongly urges that "the success of outsourcing will be obtained only through vigilant monitoring/evaluation of each outsourcing exercise." Paragraphs 32-36, 60 and 64-67; and recommendations 4, 5, 11, and 12 are also relevant.

12. For example, large multinational companies such as IBM, Philip Morris, Pfitzer International, Nestlé, interviewed on the issue of travel management, all stressed a need to be able to monitor on a continuous basis and professionally evaluate the performance of outsourcing contractors. See also "Travel in the United Nations - Issues of Efficiency and Cost-Savings," (JIU/REP/95/10; or A/50/692).

13. For a more detailed discussion on the concern about the possible difficulty of finding competent translators in times of heavy workload, see "Outsourcing," *UN Staff Report*, vol. 22, No.3, (March 1997), p. 7.

14. See the World Bank *Administrative Manual*, "Outsourcing Policy and Implementation Guidelines," (World Bank/IFC/MIGA, Statement 16.00), para. 126, p. 32.

15. See the "Staff Position Paper on Outsourcing Issues," presented by the New York Staff Union in 1996 to the Staff Management Coordination Committee as Annex to SMCC-XX/1996/6.

16. See Staff Management Coordination Committee Report (SMCC-XX/1996/6, Draft III/2), para. 62.

17. Ibid., para. 6.

18. A/50/1004, para. 39 (a).

19. Staff for training on contract administration have been enrolled at George Washington University in Washington, D.C.

20. A/51/804, para. 11.

21. See New Directions in Finance: Strategic Outsourcing, by The Economic Intelligence Unit, in cooperation with Arthur Anderson, (New York, 1995), p. 9.

22. Ibid.

23. Ibid.

24. For example, in A Review of Telecommunications and Related Information Technologies in the United Nations System (JIU/REP/95/3, para. 111), it has been observed that, "in cases of emergency, the United Nations system needs to have a certain type of telecommunication, whatever the cost."

25. There is considerable evidence that governments lower production costs by contracting out, and Australian and British studies have found that savings are in the range of 20 percent to 30 percent. See Steven Globerman and Aidan R. Vining, "A Frame Work for Evaluating the Government Contracting-Out Decision with an Application to Information Technology," Public Administration Review, vol. 56, No. 6, November/ December 1996, p. 579. In an interview on March 26, 1996, for preparation of this report, David. C. Childs, of the Office of Management and Budget, Executive Office of the President, United States Government, described what he called the "competition axiom." He reported that when faced with the prospect of competition, public units tend to decrease their costs by 30 percent before entering competition. He said this finding has been verified by his own studies, by OECD studies, and by academics.

26. World Bank, op.cit., para. 17.

27. World Bank, op.cit., para. 19.

28. In the OIOS report on outsourcing, paragraph 20, the problem of associating costs with corresponding activities in the United Nations, which does not have an activity-based accounting system, is noted.

29. See New Directions in Finance: Strategic Outsourcing, op.cit., p. 31.

30. See "Review of Industrial Services Policy," (CERN/FC/3717) p. 1.

31. See the OIOS report on outsourcing, Recommendation 13.

32. See the United Nations System Cooperation with Multilateral Financial Institutions, Part II (JIU/REP/92/1), paras. 92-108.

33. See also OIOS report on outsourcing, Recommendation 3.

JIU 1995 SURVEY OF OUTSOURCING IN ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

(US Dollars to the nearest thousand)

		A. The United Nations, Specialized Agencies and IAEA													B. Operational Funds and Programmes**					
		UN	ILO	FAO	UNESCO	ICAO	WHO (HQ)	UPU	ITU	WMO	IMO	WIPO	UNIDO	IAEA	TOTAL	UNICEF	UNDP	UNFPA	WFP	UNHCR	TOTAL
1	Combined financial resources*	2,257,502	372,332	579,000	366,646	52,578	780,096	32,719	141,636	142,297	40,553	103,168	225,516	343,926	5,415,965	2,002,790	2,764,009	469,000	1,201,661	1,142,949	7,580,408
	Regular Budget		233,255	337,000	227,745	52,578	411,051	29,488	132,861	104,478	27,084	98,984	99,449	211,577	1,965,550						
	Extrabudgetary		139,077	242,000	127,900	NONE	358,046	3,231	8,775	37,819	13,469	4,181	126,067	132,349	1,192,913						
2	Funds for Outsourcing (allocated) in 1995***		6,594	Not Avail.	3,586	396	2,500	2,414	6,454	Not Avail.	4,016	27,019	15,092	2,907	72,978	Not Avail.	4,876	206,200	8,311	535,400	754,787
	Regular Budget		6,594	Not Avail	3,586	396	2,500	1,724	6,256	Not Avail	4,016	25,932	15,092	1,677	67,973						
	Extrabudgetary		NONE	Not Avail	NONE	NONE	NONE	690	2,198	Not Avail	NONE	1,087	NONE	1,030	5,005						
3	Distribution of (allocated) funds in 1995																				
	Headquarters		100%	Not Avail	100%	100%	100%	100%	NA	Not Avail	100%	100%	Not Avail	65%		Not Avail	72%	0%	100%	Not Avail	
	Field		0%	Not Avail	Not Avail	NA	Not Avail	NA	NA	NA	NA	NA	Not Avail	35%		Not Avail	28%	100%	0%	Not Avail	
4	Total Staff in 1995		2,404	4,653	2,431	736	4,143	208	786	304	316	627	1,062	1,753	19,443	7,517	5,512	924	1,968	5,423	21,344
	Regular Budget		65%	55%	85%	100%	69%	86%	94%	79%	80%	98%	79%	100%							
	Extrabudgetary		35%	45%	15%	0%	31%	14%	6%	21%	20%	2%	21%	0%							
5	Professional full-time staff for outsourcing in 1995		3	8	0	0	0	0	2	1	0	0	Not Avail	0	14	0	1	0	0	0	1
	Regular Budget		3	4	0	0	0	0	1	0	0	0	Not Avail	0	8	0	1	0	0	0	1
	Extrabudgetary		0	4	0	0	0	0	1	1	0	0	Not Avail	0	6	0	0	0	0	0	0
6	Activities Outsourced in 1995														POSITIVE Responses						POSITIVE Responses
	Major Substantive Programmes		NO (HQ)	YES	NO	NO	YES (HQ)	YES	NO	Not Avail.	YES	YES	NO	YES	6/12	YES	NO	YES	YES	YES	4/5
	Administrative Support-type Activities																				
	Accounting		NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	1/12	NO	YES	YES	NO	NO	2/5
	Auditing (internal)		NO	NO	NO	NO	NO	YES	YES	NO	NO	YES	NO	NO	3/12	NO	YES	YES	YES	YES	4/5
	Archives		NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	1/12	YES	YES	YES	NO	NO	3/5
	Bookshop (sale of org. pubs./docs.)/Giftshop		YES	NO	NO	NO	YES	NA	NO	NO	NO	YES	NO	NO	3/12	NO	NA	NA	NA	NO	0
	Building Maintenance		YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	11/12	YES	YES	YES	YES	YES	5/5
	Cleaning Services		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	12/12	YES	YES	YES	YES	YES	5/5
	Food Services/Catering		YES	YES	NO	YES	YES	YES	YES	YES	NO	YES	YES	YES	10/12	YES	NA	YES	YES	YES	4/5
	Grounds/ (garden) Maintenance		YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	11/12	NA	NA	YES	YES	YES	3/5
	Interpretation		NO	YES	NO	YES	YES	YES	YES	YES	NO	YES	YES	YES	9/12	YES	YES	YES	YES	YES	5/5
	Translation		NO	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	10/12	YES	YES	YES	YES	YES	5/5
	Information Systems/Information Technology		NO	YES	NO	YES	YES	YES	NA	YES	YES	YES	NO	YES	8/12	YES	YES	YES	YES	YES	5/5
	Mail/Pouch		NO	YES	YES	NO	NO	YES	NO	YES	NO	YES	YES	NO	6/12	YES	YES	YES	YES	YES	5/5
	Medical Services		NO	YES	NO	YES	YES	YES	NA	YES	YES	YES	YES	NO	8/12	YES	YES	YES	NO	YES	4/5
	Printing/Publishing		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	12/12	YES	YES	YES	YES	YES	5/5
	Recruitment		NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	1/12	NO	YES	YES	YES	NO	3/5
	Security		YES	YES	NO	YES	YES	YES	NO	YES	YES	YES	YES	YES	10/12	YES	YES	YES	YES	YES	5/5
	Staff Counseling/Outplacement		NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	1/12	NO	YES	YES	YES	NO	3/5
	Training		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	11/12	YES	YES	YES	YES	YES	5/5
	Travel Services		YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	11/12	YES	YES	YES	YES	YES	5/5
	Transportation/Local Motor Pool		YES	YES	NO	YES	NO	NO	NO	NO	NO	YES	NO	YES	5/12	NO	NA	NA	YES	NO	1/5
	Warehousing		NO	YES	NO	NO	YES	YES	NA	NO	NO	YES	NO	NO	4/12	NO	NA	NA	YES	YES	2/5
	Other		NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	NO	5/12	YES	YES	NO	YES	NO	3/5
	TOTAL (Outsourced Administrative Services)		10	16	7	13	14	16	10	14	8	22	11	12		14	17	18	18	15	
7	Required Legislative Authority to Outsource		NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	NO	NO	1/12	NO	NO	NO	NO	NO	0
8	Written Outsourcing Policy		NO	NO	BD	NO	NO	NO	BD	NO	NO	NO	NO	NO	0	NO	NO	NO	NO	NO	0
9	Deciding/ Managing Procedures for Outsourcing																				
	Criteria for the Decision to Outsource		NO	NO	NO	NO	YES	NO	BD	NO	NO	YES	NO	NO	3/12	NO	NO	NO	NO	NO	0
	Use of any cost-benefit analysis		A	A	A	S	S	S	S	S	S	S	A	A	12/12	A	S	S	S	S	5/5
	Specified Cost- Benefit Methodology		NO	NO	BD	NO	YES	NO	NO	NO	BD	YES	BD	NO	4/12	NO	NO	NO	NO	NO	0
	Criteria for Selecting Vendors/Contractors		NO	YES	BD	NO	YES	NO	YES	YES	YES	YES	YES	YES	9/12	YES	YES	YES	YES	YES	5/5
	Procedures for Managing/Monitoring Contracts		NO	YES	BD	NO	YES	NO	NO	NO	YES	YES	YES	NO	6/12	YES	NO	YES	YES	YES	4/5
	Criteria for Assessing Performance		NO	YES	BD	NO	YES	NO	NO	BD	NO	YES	YES	YES	7/12	YES	BD	YES	YES	YES	5/5
	Criteria for Renewal of Contracts		YES	NO	YES	NO	YES	NO	YES	NO	YES	YES	YES	NO	7/12	YES	YES	YES	YES	YES	5/5
10	Staff Impact due to outsourcing in 1995		3	70	0	0	0	0	0	0	0	0	0	0	73	0	6	Not Avail.	0	0	6
	Retirement/Voluntary with incentives		1	0	0	0	0	0	0	0	0	0	0	0		0	6	Not Avail	0	0	
	Retirement/Voluntary without incentives		1	20	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	
	Retrained/remained		0	40	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	
	Redeployed/Transferred		0	5	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	
	Retrained & Redeployed		0	5	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	
	Terminated staff contracts		1	0	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	
	Other		0	0	0	0	0	0	0	0	0	0	0	0		0	0	Not Avail	0	0	

* Does not include peacekeeping funds and funds for tribunals (Former Yugoslavia and Rwanda)

**In the absence of assessed budgets, figures reflect expenditure based on voluntary funding

***Allocated funds for outsourcing for UNDP is from their Administrative budgets only

A= always; S= sometimes, N= never; BD= being developed, NA= not applicable

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Report of the Secretary-General on the Activities of the Office of Internal Oversight Services

Note by the Secretary-General

1. Pursuant to General Assembly resolution 48/218 B of 29 July 1994, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the investigation into the alleged conflict of interest in the United Nations Centre for Human Settlements (Habitat).

2. The Secretary-General takes note of its findings and concurs with its recommendations.

* A/52/150 and Corr 1.

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Annex

Report of the Office of Internal Oversight Services into alleged conflict of interest within the United Nations Centre for Human Settlements (Habitat)

Summary

In late April 1997, the Investigations Section of the Office of Internal Oversight Services was asked to inquire into a possible conflict of interest in the United Nations Centre for Human Settlements (Habitat). The question arose owing to a series of reports dating from 1994, from other oversight units and within the Centre itself, that raised but did not resolve the issue. The question of conflict of interest first emerged after a consultant to the Centre, who had been affiliated with a Nairobi-based consultancy group called Matrix Development Consultants, was hired as a human settlements adviser in the Centre'sTechnical Cooperation Division in February 1991. At that time she was cohabiting with a director of Matrix, whom she married the following year. Prior to the hiring of the staff member in 1991, she and other consultants associated with Matrix had been hired regularly by Habitat, by other organizations and by Governments to work on human settlement projects throughout Africa.

A year after the staff member was hired, the first in a series of contracts was given to Matrix by the unit in the Technical Cooperation Division to which she was assigned. The Government of the United Republic of Tanzania had specifically requested the services of the staff member's spouse in connection with a project for which the Centre and the United Nations Development Programme were providing technical and financial assistance. The staff member went to her supervisor, the Chief of the Technical Cooperation Division, to inquire as to how the request should be handled. He directed her to provide the Government with a list of several experts from which it could choose its preferred candidate. The staff member's spouse was selected by the Tanzanian Government, and he was engaged by the Centre under a reimbursable loan agreement. That agreement was reviewed and then ratified by the designated Habitat committee on such agreements.

However, from that point questions were raised in reimbursable loan agreement review meetings, and rumours were circulated concerning a link between the personal relationship of the staff member to the Matrix consultant and the issue of Habitat contracts with Matrix. No one alleged that Matrix consultants were not well-qualified experts or that the work assigned to them was not performed. Rather, using "common sense", but without referring to the applicable United Nations staff rule, some staff members perceived the personal relationship and the hiring of Matrix consultants to be conflict of interest on the part of the staff member.

Between 1991 and 1993, Matrix consultants were hired to provide expertise on seven projects. All such agreements were reviewed by the Centre's internal review committees and offices. The primary review committee was aware unofficially that the staff member and the consultant had a personal relationship, but did not question either the staff member or the Technical Cooperation Division about it and continued to approve the contracts. After receiving information on the conflict of interest matter from a member of the review committee in August 1993, the Acting Director of Administration met with the Chief of the Division and a conversation ensued on the committee's concerns. As a result of that conversation, the Chief informed the staff member,

in September 1993, that she and her unit were to have no role in any future contracts with Matrix. From that time forward, the Investigations Section has confirmed, no new contracts with Matrix have emanated from the staff member's unit.

None of the reviews or considerations, whether formal or informal, that have touched on this topic over the last five years has addressed the relevant United Nations rule on conflict of interest: staff rule 101.6 requires that to find a conflict of interest, the staff member must "be actively associated with the management of or hold a financial interest in any business concern". As the staff member was not personally active in Matrix and did not personally hold an interest in the firm, she cannot be found to have violated the rule. After the conflict issue was raised by the internal auditors in a report issued in November 1994, the Deputy Director of the Centre, in January 1995, called for an internal Panel of Investigation to review the matter. The panel reported that in its view a conflict of interest did exist. However, like the auditors, its opinion was framed from a common-sense view of conflict of interest, and not from the heavily restrictive provisions of the relevant staff rule on the subject.

Over a year later, in February 1996, the Acting Director of Administration wrote to the Deputy Director of the Centre expressing the view that no further contracts should be given to Matrix consultants while the staff member was employed by the Centre. The documentary evidence indicates that the memorandum was distributed only to the Centre's Contracts and Procurement Section and was placed in the staff member's personnel file; it was not circulated throughout the Centre until March 1997, when it was discovered by the Director of the Office of Programme Coordination during a search for records relating to the conflict issue. He then directed that it be circulated throughout the Centre.

In September 1996, an inspection of the Centre by the Central Monitoring and Inspection Unit of the Office of Internal Oversight Services was conducted. On 23 April 1997, a report based on the findings of the Unit was issued (A/51/884). In the summary of that report, the Office noted that a case of conflict of interest raised by the internal auditors in 1994 remained unresolved and that it intended to investigate the matter.

Given the available evidence, while the Investigations Section concurs with the common-sense view that the situation gives the appearance of a conflict of interest, it does not appear that United Nations staff rule 101.6 addresses the facts of the situation. That a staff member who benefits indirectly from contracts awarded to her spouse for which she has some responsibility may not be found to be in violation of the United Nations conflict of interest rule is the clearest evidence of the rule's deficiency. Thus, the Investigations Section must conclude that staff rule 101.6 fundamentally fails to protect the interests of the United Nations.

Further, the lack of sufficient and clear guidelines has created confusion as to what constitutes a conflict of interest at the United Nations. Although it should have been issued earlier, the September 1993 decision to exclude the staff member and her unit from involvement with Matrix was in the best interests of the Centre. It addressed the problem and should have resolved the issue; however, the matter was kept alive by internal politics.

Finally, the evidence does not support a finding of retaliation against a staff member for raising the issue of conflict of interest, and the record does not show that he suffered any damage to his career as a result of his discussion of the topic.

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I. Introduction

1. Following the release of the report of the Office of Internal Oversight Services on the United Nations Centre for Human Settlements (Habitat) in April 1997 (A/51/884), the Investigations Section of the Office was called upon to conduct an investigation into the conflict of interest case. Two investigators were assigned. Interviews were conducted at the Centre's headquarters, at Nairobi, between 13 and 28 May 1997. All available individuals having knowledge of the matter were interviewed, with some interviews conducted with former Habitat staff members in New York in June.

2. It is necessary to explain why the present report is so detailed on a subject some have perceived to be a simple conflict of interest case. First, at no stage previously had all the available information on the issue been assembled for comparison and review; second, no thorough study of the applicable United Nations Staff Rules had been undertaken to assist in the determination of whether the case was one of an actual conflict of interest or rather an apparent conflict of interest reflecting a common-sense application of just and reasonable behaviour; third, the report must be detailed and legalistic to allow the United Nations to understand the insufficient nature of the current conflict of interest rules.

3. The investigation team is greatly appreciative of the time and effort provided to it by all levels of staff during the investigation. The Executive Director of the Centre and the Legal Adviser have reviewed the recommendations of the investigation report and are in agreement with them.

II. Pertinent Staff Rules and Regulations

4. In consultation with the General Legal Division of the Office of Legal Affairs, the Investigations Section identified the only relevant legal provision of the United Nations on the issue of conflict of interest: staff rule 101.6, "Outside activities and interests".

Staff rule 101.6

5. As of this writing, the Office of Legal Affairs was preparing a draft code of conduct that included provisions as to conflict of interest. However, it appeared that the draft retained the same language found in staff rule 101.6 (b), which provided that:

> "No staff member may be actively associated with the management of, or hold a financial interest in, any business concern if it were possible for the staff member to benefit from such association or financial interest by reason of his or her official position with the United Nations."

6. It is clear that any determination in this case must rest on the relevant legal provisions of staff rule 101.6. The evidence adduced must be analysed against the requirements of those provisions, and on that basis, the determination of the case must rest.

III. Details of the investigation

Role of Unit II in the Centre's projects

7. The conflict of interest subject is centred on Unit II, one of the four geographic units within the Centre's Technical Cooperation Division. The staff member concerned began as a human settlements adviser in Unit II who coordinated human settlement projects with national Governments and the United Nations Development Programme (UNDP). She subsequently became the Unit II coordinator. It should be noted that the staff member had previously worked as an independent consultant, frequently under the umbrella of Matrix Development Consultants, between 1984 and 1991. She was engaged by the Centre as a consultant under special service agreements on 15 separate occasions during that period to work on projects in anglophone Africa.

8. Projects are requested by the national Governments and, after consultations among the Government involved, the human settlements adviser and UNDP, the project progresses technically through the geographic units of the Centre. This especially relates to the hiring of outside expertise for the completion of tasks within the projects.

9. In order to engage an external consultant for any project, the human settlements adviser is required to identify suitable candidates from the Centre's central roster of consultants and match them with the project's terms of reference. The human settlements adviser should then draw up a short list of candidates and submit it to the relevant Government. Once the Government has made its selection, the adviser provides details about the selected candidate to the unit's Project Management Officer, who submits an official request for either a reimbursable loan agreement or a special service agreement to the Personnel Recruitment and Administration Section.

10. The Personnel Section then submits the documents to the reimbursable loan agreement committee (or currently a management committee) for approval or clarification of any issues before engaging the services of the consultant. The section is responsible for all financial negotiations with the consultant.

11. The conflict of interest case is based on the role played by the staff member as a human settlements adviser in Unit II, and later as coordinator, in initiating, evaluating and certifying the work undertaken by her spouse on projects emanating from her unit.

Structure of Matrix Development Consultants

12. Matrix is a cooperative arrangement whereby individual consultants pay a nominal fee each month, as well as a percentage of each fee paid to them, for common expenses. It was formerly known as Consultants for Management and Development Programmes (CDP). The main consultants are not paid a wage by Matrix; rather they rely on income generated individually. For that reason, it was incorrect for the Centre to engage the services of the Matrix consultants under reimbursable loan agreements; special service agreements are designed for the hiring of individual consultants.

13. The staff member in question was a shareholder of CDP until at least 1986; however, she stated that she had disposed of her shares before joining the Centre in February 1991. The Investigations Section cannot confirm that date independently, as Kenyan Government records have provided information on shareholders only up to 1994, and the date of the sale of the staff member's shares is not listed.

First conflict of interest problems

14. The staff member approached the Chief of the Technical Cooperation Division in November 1991 when she was requested by the Government of the United Republic of Tanzania to hire a consultant with whom she was cohabiting for a Centre project (URT/90/033). The staff member wanted to clarify her position vis-à-vis the conflict of interest with her supervisor, so she sought his advice.

15. The Chief directed the staff member to offer several well-qualified candidates, including the consultant in question, to the Tanzanian Government for its final selection. The Chief believed that this would reduce the likelihood of any accusations of favouritism on the part of the staff member towards the consultant while still allowing the Tanzanian Government to select the candidate of its choice. Several candidates were offered to the Tanzanian Government and it again selected the consultant in question. The engagement of the consultant then progressed via standard recruitment procedures. Without further consultation with her supervisors, the staff member evaluated and certified the Matrix invoice, then included her spouse in several lists submitted to Governments, also without further consultation.

Personal relationship between staff member and consultant

16. The staff member stated during an interview that she had met the consultant, her current husband, in the late 1970s in England and had moved with him to Nairobi in 1981. They cohabited in Nairobi from that date and were married in Nairobi on 18 August 1992. However, no one from the Centre attended the wedding and she did not advise the Centre of her change in status for nearly three years.

17. A review of the staff member's personnel file revealed a memorandum written by her to the administration of the Centre dated 10 July 1995, in which she asked that her marital status be changed from "single" to "married". The staff member stated that she forgot to inform the administration of her change of status and discovered the error only upon renewing her contract in early 1995. She said that she did not notice the error in previous contract renewals.

Consultant's contractual history with the Centre

18. The consultant had been hired by the Centre under reimbursable loan or special service agreements on seven separate projects between 1979 and February 1991, the date on which the staff member began working in Unit II. In addition, he had worked briefly for the Centre in 1983 and 1984. Thus, the consultant was well-known professionally to the Centre and the Technical Cooperation Division prior to the staff member's recruitment.

19. The consultant was personally engaged on six projects between January 1992 and September 1993. Four of those projects were initiated, evaluated and certified by Unit II. Matrix consultants were engaged on another four projects during that period. The total amount paid to the consultant

for the period from January 1991 to September 1993 was $145,819, out of a total of $175,905 paid to the Matrix group of consultants.

Management response to the conflict of interest

20. The reimbursable loan agreement committee had learned in 1993 that the staff member and the consultant were involved in a close personal relationship. At that time the committee questioned the ethics of the staff member in proposing her spouse for a number of contracts emanating from Unit II, but continued to approve the contracts with Matrix. The Acting Chief of Administration stated that a member of the reimbursable loan agreement committee had raised the conflict issue with him in August 1993 and had suggested that the matter was in need of clarification by Centre management.

21. The Chief of the Technical Cooperation Division believed that the decision he took in November 1991 on the handling of Government requests for the consultant via Unit II had resolved the conflict of interest issue. The subject did not come to his attention again until September 1993. At that time the Acting Chief of Administration, in response to the request of the reimbursable loan agreement committee member, raised the question of a conflict of interest involving the staff member and Matrix consultants. The Chief of the Technical Cooperation Division was informed by the Acting Chief of Administration that a large number of reimbursable loan agreements involving Matrix consultants were emanating from Unit II.

22. Following that discussion, the Chief of the Technical Cooperation Division directed the staff member that from that point forward, Unit II could not be involved in any aspect of contracts with Matrix or any of its consultants. The issuance of such a verbal directive has been confirmed by both the former Deputy Director and the former Acting Chief of Administration, although no documentary evidence exists.

23. The Chief of the Technical Cooperation Division further proposed that all future contracts involving Matrix consultants and countries for which Unit II had responsibility would be handled by the Project Management Officer in the Global and Interregional Programme. The Chief of the Technical Cooperation Division believed that this decision would resolve the conflict problem. The Global and Interregional Programme was already involved in projects in Ghana and the United Republic of Tanzania that the consultant had been associated with in the past, and so could readily assume that responsibility.

Audit of reimbursable loan agreements by internal auditors

24. An audit of reimbursable loan agreements in the Centre was undertaken by the internal auditors in 1994, and their report was submitted to Centre management on 21 November of that year. The audit reported on the conflict of interest issue and identified several reimbursable loan agreements that had been issued to Matrix by the staff member, who prior to joining the Centre had been a partner in the company and had resided with and nominated a present director of the company as the sole beneficiary of her Pension Fund settlement. The report also stated that there was a correlation between the position of the staff member and extensive contracting of the company in which she had been a partner.

25. The audit report did not attempt to link the activities identified as a conflict of interest with the United Nations staff rule applicable to such cases. Nor does the report detail any information pertaining to the structure of Matrix vis-à-vis the employment of consultants and how that might have affected the claim of a conflict. However, the report, which was issued after the 1993 decision to separate the staff member's unit from Matrix contracts, properly raised an issue of concern during the audit process.

1995 panel of investigation

26. In response to the finding of a conflict of interest in the Centre in the 1994 audit of reimbursable loan agreements, the Deputy Director established a panel in January 1995 to investigate and report on the case. The panel comprised three staff members and was given one month to conduct an investigation. The report, submitted to the Deputy Director on 28 February 1995, contained a range of recommendations.

27. The panel found that there was no blame to be attached to the staff member as she had informed her supervisor of the possible conflict of interest in 1991 and had received instructions on how to handle the issue. When the issue arose again in 1993, she stated that she had received direct instructions from her supervisor to cease all Unit II involvement in Matrix contracts. The staff member maintained that she had followed those instructions up to the present time.

28. The panel laid the blame for the conflict of interest on systemic problems in the management of the Centre, specifically in not issuing clear guidelines on how to handle such problems. The panel did attempt to link the activities undertaken by the staff member in regard to Matrix to the United Nations Staff Rules. It made reference to article I of the Staff Rules, on duties, obligations and privileges, and to the Report on Standards of Conduct in the International Civil Service, paragraph 4 (1954), but as with the auditors' report, it did not adequately match the activity with the pertinent rule (staff rule 101.6). Rather, the panel concluded, quite reasonably, that the primary burden in terms of transparency rested with the staff member about to undertake actions that might be construed as containing an element of conflict of interest.

29. The panel did not investigate the full scope of United Nations Staff Rules and Regulations in finding that a conflict of interest was apparent in the Centre. Apparently, no further legal research was undertaken by the Deputy Director, who is a lawyer, to identify fully the legal position vis-à-vis conflict of interest in the United Nations.

Alleged continuation of the conflict of interest

30. After the September 1993 decision by the Chief of the Technical Cooperation Division to cease the engagement of Matrix consultants by Unit II, four agreements, namely, two separate procurement contracts, one reimbursable loan agreement and one special service agreement, were found to have been awarded to Matrix consultants. Although popular belief in the Centre was that they emanated from the staff member's unit, none did.

31. This misapprehension led to the continuation of the conflict of interest issue within the Centre. All contracts were initiated by other units within the Technical Cooperation Division; however, one contract, which was not initiated or evaluated by Unit II, utilized the Unit II Project Management Officer to oversee the payment of outstanding invoices from the project. The staff member in question played no role in that action. Therefore, the investigators determined that since the September 1993 management decision, neither Unit II nor the staff member had initiated, evaluated or certified any Matrix consultant contracts, in accordance with the directive from the Chief of the Technical Cooperation Division.

Management retaliation against a staff member for raising the conflict of interest matter

32. Allegations have been made by the former Acting Chief of Administration that as a result of his raising questions in 1994 on the continuation of the conflict of interest case, he was removed from that position and his career has suffered as a result.

33. The investigators found that legitimate factors determined the replacement of the staff member in the position of Acting Chief of Administration in September 1994. Those factors were not related in any way to the conflict of interest matter; rather, they pertained to the upcoming formation of the United Nations Office at Nairobi, which would involve a merger of administrative functions previously conducted by the Centre and the United Nations Environment Programme. It was also found that when the staff member lodged his concern regarding the continuation of the conflict of interest into 1994, it was based on inaccurate information as to the role of Unit II in Matrix contracts after September 1993.

34. The reasons provided by Centre management as to the post-September 1994 assignments of the staff member and the lack of documented evidence of career-related hardship lead to the finding that the staff member was not the recipient of retaliatory or punitive action from Centre management on the conflict of interest matter.

Breach of contractual obligation

35. Contained within the terms and conditions of Centre contracts with external contractors is a clause on direct and indirect benefit to United Nations officials (clause 10), which states:

> "The contractor represents and warrants that no official of the United Nations has been, or shall be, admitted by the contractor to any direct or indirect benefit arising from his contract or the award thereof. The contractor agrees that breach of this provision is a break of an essential term of this contract."

36. The consultant, on behalf of Matrix, signed a contract under the above conditions on 1 November 1994. The consultant was asked in May 1997 if he had been aware of the clause in the contract regarding benefit to United Nations officials. He responded affirmatively and agreed that the staff member, as his wife, did receive an indirect benefit from the awarding of the contract to him through Matrix.

37. This action by the consultant constituted a breach of clause 10 of the conditions of service for contractors engaged by the Centre. Normally, such a breach would cause the contract to become void. However, given that the work undertaken by the contractor was completed in late 1995 and all fees have been paid, the United Nations must seek alternative measures to address the breach by the contractor. The Investigations Section believes that the breach of contract requires the United Nations to enforce a ban upon the future hiring of this consultant by the Centre.

IV. Analysis of the facts of the case and the United Nations Staff Rules and Regulations

Staff rule 101.6

38. As noted in section II of the present report, the resolution of this case rests on the application of the relevant rule to the facts of the case. As mentioned, the applicable rule for conflict of interest on the part of a staff member is staff rule 101.6 (b) (see para. 5).

39. Under that rule, a finding of conflict of interest can be made only where the following three elements are present:

(a) The person involved is a staff member;

(b) The person involved is active in the management of the firm or holds a financial interest in the firm;

(c) The person can benefit from his or her involvement with the firm because of the role that he or she has as a United Nations staff member.

40. First, the involved person is a staff member of the Centre, has been since 4 February 1991 and continues in that role today, and so the provisions of staff rule 101.6 (b) apply to her.

41. Second, the staff member must be shown to "be actively associated with the management of a business", in this case Matrix, or must be found to "hold a financial interest in" Matrix. This is the most difficult provision to analyse, as there are no recorded decisions that the Investigations Section or the Office of Legal Affairs could identify as having provided guidance on their meaning. As such, we must follow the plain meaning of the words themselves.

42. Can it be shown that the staff member at any time while employed by the Centre, was actively associated with the management of Matrix? The answer is no. None of the interviews conducted nor the available documentation provides evidence that the staff member was personally involved in the management of the firm since she began working as a staff member at the Centre. Her personal relationship with a principal of the firm is not proof of any management of the firm on her part, as she must be associated herself, not through her partner. Under the rule, Investigations Section cannot assume that the spousal relationship alone creates an association that is prohibited per se.

43. Can it be shown that the staff member holds a financial interest in Matrix? Again, the evidence requires a negative finding. The language of the rule requires that the evidence demonstrate that she "holds" an interest. While her spouse holds shares in Matrix, his financial interest cannot be imputed to her. In other words, the rule requires that the staff member herself must hold the financial interest, as in holding shares of stock — which, according to the Registry of Businesses in Kenya, the staff member has not done, at least since 1994. The staff member acknowledges that she did hold shares when she worked with the firm during the mid-1980s but that she removed herself as a shareholder prior to joining the Centre in 1991, and the investigation revealed no evidence to contradict her.

44. Third, can it be shown that the staff member received a benefit by reason of her position with the Centre? It can be easily proven that, by virtue of her position with the Centre, the staff member stood to benefit personally, albeit indirectly, through contracts given to her husband. If the rule required only a finding that she "have", rather than "hold", a financial interest, the evidence would fully justify a finding by the Investigations Section that she had a prohibited conflict of interest. Both the staff member and the consultant acknowledged to the investigators that she stood to benefit indirectly from any earnings by her husband, at least since their marriage in August 1992. Moreover, as the staff member did not notify the Centre's administration of her marriage until some three years after the event, the circumstances suggest an intent to withhold that information. The difference between the two legal concepts — "holding" versus "having" a financial interest — makes all the difference here.

V. Conclusions

45. On the basis of the evidence compiled in the investigation, the Investigations Section agrees with those who have examined the contracts with Matrix since 1991 that there is an *appearance* of a conflict of interest owing to

the staff member's involvement with Matrix contracts, particularly those awarded to the consultant after her marriage in August 1992. However, as discussed in section IV of the present report, the provisions of staff rule 101.6 do not allow for a finding of an *actual* conflict of interest. As a result, the Investigations Section cannot charge the staff member with a violation of that rule.

46. The Investigations Section notes the difficulty here, as previous reports on the subject by the internal auditors in 1994, the Centre's panel of investigation in 1995 and the report of the Office of Internal Oversight Services of April 1997 all indicate a conflict of interest. Moreover, the case has generated divisive debate within the Centre as individuals examined what they knew of the situation and saw a violation — what the investigators have identified as a "common-sense" view of conflict of interest.

47. However, none of the earlier investigations performed the legal analysis of comparing the facts of the case with the rules of the United Nations. It is of concern to the Office of Internal Oversight Services that the former Deputy Director of the Centre, a lawyer, could have provided legal advice to senior management that might have clarified this situation years earlier, at least as of early 1995, following his receipt of the investigation panel's report.

48. Nevertheless, the critical problem in this case, and for the United Nations generally, is the absence of a clear and substantial conflict of interest provision that alerts staff members to the problems inherent in any division of loyalty. Without such a rule, both staff members and managers will find themselves in the same confusing and awkward position as the senior managers of the Centre. The United Nations needs to take the steps necessary to protect its interests and those of the Member States in the expenditure of its limited financial resources.

49. While in this case there was no charge or evidence that the work had not been satisfactorily performed, it is clear that, hypothetically, the rule as written would allow for an unscrupulous staff member to arrange for contracts for family members — without penalty under staff rule 101.6. If the United Nations wishes to ensure undivided loyalty, then the rules of the United Nations must reflect that wish. Until that occurs, the United Nations remains vulnerable.

VI. Findings

Did a conflict of interest occur?

50. As discussed, the existing provisions of staff rule 101.6 do not provide a sufficient definition of conflict of interest to embrace the facts of this case. The very restrictive elements of the rule will preclude a finding of a conflict in most cases where common sense would suggest — as it did for the internal auditors, the panel of investigation, the Central Monitoring and Inspection Unit and others in the Centre — that one exists.

51. The facts of the case are clear in that the staff member not only recommended and approved the award of consulting contracts to her husband, both before and after her marriage, but also that she approved and certified for payment several of those invoices. While there is no charge that the consultant was not fully qualified to do the work or that he did not do the work, the appearance of a conflict clearly exists when a staff member participates in the contracting process as occurred here.

52. Nonetheless, because the legal provisions must govern, no violation of staff rule 101.6 can be adjudged. Although the actions of the staff member reported here cannot be held to have violated the rule, the staff member's conduct, including her failure to notify the Centre of her marriage for three years, does not constitute appropriate behaviour by an international civil servant.

Was management's response appropriate?

53. As each issue related to the conflict of interest issue was raised to management, the matter was addressed with varying degrees of success. The issues raised were as follows:

(a) The verbal directive to the staff member by the Chief of the Technical Cooperation Division in November 1991 to offer several qualified candidates to the Government of the United Republic of Tanzania from which it could choose its preferred candidate addressed only the issue of selection of candidates by Governments, not the issue of certification and evaluation of the consultant's work by the staff member;

(b) The directive to the staff member by the Chief of the Technical Cooperation Division in September 1993 that Matrix contracts could no longer be handled by her unit was very successful in resolving the conflict of interest

problem within Unit II, but should have been documented to the management team of the Centre;

(c) The issue remained alive in some sections of the Centre as a result of misinformation as to the role of Unit II in post-1993 Matrix hirings and the non-disclosure of the September 1993 decision;

(d) The Deputy Director's decision in January 1995 to empower the panel of investigation was correct and timely, but the issue again remained alive because of the Deputy Director's decision to accept, but not to distribute, the panel's recommendations;

(e) The Deputy Director again lost the opportunity to resolve the conflict issue by not informing Centre staff members of the 27 February 1996 memorandum from the new Acting Director of Administration stating that no further contracts would be let to Matrix by Habitat while the staff member remained in the employ of the Centre;

(f) When the conflict issue was raised in the report of the Office of Internal Oversight Services, the Director of the Office for Programme Coordination looked for documents related to the issue. He discovered the February 1996 memorandum in the staff member's file and arranged for it to be issued to all sections of the Centre to clarify the conflict of interest situation.

54. No cohesive plan for addressing the legal aspect of the conflict issue was developed or discussed, but the lack of clarity on what conduct constitutes a conflict of interest arises from the current rule. The code of conduct guidelines developed by the Director of the Office of Programme Coordination to address the conflict issue were sent to the Office of Legal Affairs for comment in March 1997. Its response required a loosening of the guidelines to ensure that they conformed fully with staff rule 101.6.

55. The September 1993 decision by the Chief of the Technical Cooperation Division to disallow the staff member and her unit to be involved in Matrix contracts was correct in the view of the Office of Internal Oversight Services and it resolved the conflict problem: no new Matrix contracts were handled by the staff member or Unit II thereafter in accordance with the directive. His reissue of the February 1996 memorandum in March of 1997 effectively halted all contractual arrangements between Matrix consultants and the Centre. Those two decisions were the only ones that actually aided the Centre in resolving the conflict of interest issue.

56. It appears that the conflict issue was raised repeatedly for a variety of reasons by those who had other, largely unrelated, grievances against the administration of the Centre. In the view of the Office of Internal Oversight Services, the viability of this issue was fed by internal disputes on other issues and by the lack of clarity in the United Nations as to what constitutes a conflict of interest. While the Investigations Section could criticize management's actions or judgement in this case, to do so would not accurately reflect the situation, namely, that the absence of a policy by the United Nations and the existence of a rule that provides virtually no protection to the interests of the Organization demonstrate that the United Nations has failed to provide its managers and staff members with the requisite guidance on the issue. Indeed, it may be reasonably inferred that staff rule 101.6 indicates that in the United Nations it is not a conflict of interest for a staff member to be involved in contracts between the United Nations and a spouse.

Did management retaliate against a staff member for having raised the issue of the conflict?

57. Allegations have been made by the former Acting Chief of Administration that, as a result of his raising questions in 1994 on the continuation of the conflict of interest case, he was removed from that position and his career has suffered as a result. The reasons provided by management as to post-September 1994 assignments for the staff member and the lack of documented evidence of career-related hardship led to the finding that the staff member was not the recipient of retaliatory or punitive action from management on the conflict of interest matter.

Was there a breach of contractual obligation?

58. The consultant, on behalf of Matrix, signed a contract on 1 November 1994. The consultant was asked in May 1997 if he had been aware of the contractual clause requiring him to warrant that no official of the United Nations would have any direct or indirect benefit from the contract. He responded affirmatively and agreed that the staff member, as his wife, did receive an indirect benefit from the awarding of the contract to him through Matrix. That action by the consultant constitutes a breach of clause 10 of the conditions of service for contractors engaged by Habitat.

VII. Recommendations

59. The recommendations of the Investigations Section have been reviewed and accepted by the Office of Legal Affairs and by the Centre. Recommendation 2 has been implemented, but recommendations 3 and 4 are pending further review and consultation on the legal implications. Recommendation 1 is the most difficult one to resolve, as the suggested change involves the new code of conduct, which is the subject of complex staff-management consultations. However, the Office of Internal Oversight Services requests that, given the clear problems that the current staff rule poses, those engaged in the consultations act to resolve the issue in the best interests of the United Nations. The recommendations of the Office of Internal Oversight Services are as follows:

Recommendation 1. The Office of Legal Affairs, which is actively engaged in the development of the new code of conduct, should be given full support and direction to strengthen and clarify the conflict of interest provisions. It should not be the case that the United Nations rule allows staff members to utilize the limited financial resources provided by the Member States to enrich themselves indirectly through their family members by virtue of their positions. The new provision should incorporate requirements that prohibit such conduct and are such that staff members are on notice that any activity performed by the staff member with any interest other than that of the Organization is prohibited (IV97/023/01);

Recommendation 2. Senior management of the Centre should ensure that the staff member married to the Matrix consultant, in whatever capacity she serves the Organization, has no involvement with decisions to initiate, evaluate or certify consultancy contracts with Matrix. The September 1993 decision by the Chief of the Technical Cooperation Division, who is now Director of Programme Coordination, was clearly in the best interests of the Organization. The Office recommends that he issue a letter restating the September 1993 decision and that the letter be acknowledged, agreed to and signed by him and the Chief of the Technical Cooperation Division and the staff member involved; any violation of its terms by her should be cause for dismissal (IV97/023/02);

Recommendation 3. The senior management of the Centre should consult with the Office of Legal Affairs on the continuation of the decision to suspend all contracts with the consultants at Matrix other than the consultant who is the spouse of the staff member (IV97/023/03);

Recommendation 4. Also in consultation with the Office of Legal Affairs, senior management should advise all Centre staff in writing that as a result of the consultant's breach of the 1 November 1994 contract (CON/HAB/94/036) under project GLO/92/D12, no further contracts are to be awarded to him (IV97/023/04).

VIII. Implementation of recommendations

60. The Office of Internal Oversight Services is pleased to report that the Centre and the Office of Legal Affairs have accepted the above recommendations. They have informed the Office of the status of implementation of the recommendations as follows:

Recommendation 1 (IV97/023/01). The Office of Legal Affairs, after consultation with the Staff-Management Coordination Committee, has developed an amendment to the code of conduct to strengthen the existing provisions relating to conflict of interest by specifically adding to staff rule 101.6 the clause "direct or indirect benefit". The amendment has been approved by the Secretary-General, but has yet to be ratified by the General Assembly.

Recommendation 2 (IV97/023/02). The Centre has fully implemented this recommendation.

Recommendation 3 (IV97/023/03). The Centre has commenced consultation with the Office of Legal Affairs on the nature of the ongoing contractual relationship with Matrix consultants other than the spouse of the staff member.

Recommendation 4 (IV97/023/04). The Centre has commenced consultation with the Office of Legal Affairs on the breach of contract matter and the issuance of advice to management on any future contractual arrangements with that consultant.

(Signed) Karl Th. **Paschke**
Under-Secretary-General
for Internal Oversight Services

UNITED NATIONS

A

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Fifty-second session
Items 8 and 121 of the provisional agenda*

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

PATTERN OF CONFERENCES

Letter dated 12 September 1997 from the Chairman of the Committee on Conferences addressed to the President of the General Assembly

I am writing in connection with the provisions of section I, paragraph 7, of General Assembly resolution 40/243, according to which no subsidiary organ of the General Assembly may meet at United Nations Headquarters during a regular session of the Assembly unless explicitly authorized by the Assembly. Those subsidiary organs that wish to meet during a regular session of the Assembly submit their request through the Committee on Conferences.

I wish to inform you that the Committee on Conferences has received requests from the Executive Board of the United Nations Development Programme/United Nations Population Fund (UNDP/UNFPA), the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Committee on Relations with the Host Country and the Committee for Programme and Coordination to meet in New York during the fifty-second session of the General Assembly. The Committee on Conferences itself is also requesting to meet at that time.

The Committee on Conferences, having carefully considered these requests and the reasons for them, does not object, on the strict understanding that such meetings would have to be accommodated within available facilities and services, so that the activities of the General Assembly itself are not adversely affected.

* A/52/150 and Corr.1.

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Accordingly, I should be grateful if the General Assembly would explicitly authorize the Executive Board of the United Nations Development Programme/United Nations Population Fund (UNDP/UNFPA), the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Committee on Relations with the Host Country, the Committee for Programme and Coordination and the Committee on Conferences to meet in accordance with their requests, subject to the conditions referred to in the foregoing paragraph.

(Signed) Uldis BLUKIS
Chairman
Committee on Conferences

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ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

PATTERN OF CONFERENCES

Addendum

Letter dated 6 October 1997 from the Chairman of the Committee on Conferences addressed to the President of the General Assembly

I am again writing in connection with the provisions of section I, paragraph 7, of General Assembly resolution 40/243, according to which no subsidiary organ of the General Assembly may meet at United Nations Headquarters during a regular session of the Assembly unless explicitly authorized by the Assembly. Those subsidiary organs that wish to meet during a regular session of the Assembly submit their request through the Committee on Conferences.

I wish to inform you that the Committee on Conferences has received a request from the Committee on Information to meet in New York during the main part of the fifty-second session of the General Assembly.

The Committee on Conferences, having carefully considered this request and the reason for it, does not object, on the strict understanding that any meeting would have to be accommodated within available facilities and services, so that the activities of the General Assembly itself are not adversely affected.

Accordingly, I should be grateful if the General Assembly would explicitly authorize the Committee on Information to meet in accordance with its request, subject to the conditions referred to in the foregoing paragraph.

(Signed) Uldis BLUKIS
Chairman
Committee on Conferences

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Item 20 (b) of the provisional agenda*

Strengthening of the coordination of emergency humanitarian and disaster relief assistance of the United Nations, including special economic assistance: special economic assistance to individual countries or regions

Assistance for the reconstruction and development of Lebanon

Note by the Secretary-General

1. In its resolution 51/30 C of 5 December 1996 on assistance for the reconstruction and development of Lebanon, the General Assembly requested the Secretary-General to report to it at its fifty-second session through the Economic and Social Council on the implementation of the resolution.

2. At its substantive session of 1997, the Council had before it the report of the Secretary-General on the question (E/1997/96). That report is hereby transmitted to the Assembly at its fifty-second session.

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* A/52/150 and Corr.1.

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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Report of the Secretary-General

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I. INTRODUCTION

1. On 12 November 1996, the General Assembly adopted resolution 51/17, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", in which it requested the Secretary-General, in consultation with the appropriate organs and agencies of the United Nations system, to prepare a report on the implementation of the resolution in the light of the purposes and principles of the Charter and international law and to submit it to the Assembly at its fifty-second session.

2. Pursuant to the request, by a note dated 28 February 1997, the Secretary-General invited Governments and organs and agencies of the United Nations system to provide him with any information they might wish to contribute to the preparation of his report.

3. The present report reproduces the replies from Governments and from organs and agencies of the United Nations that had been received as of 5 September 1977. Further replies will be reproduced as addenda to the present report.

II. REPLIES RECEIVED FROM GOVERNMENTS

ALGERIA

[Original: French]

[14 July 1997]

1. Algeria fully supported resolution 51/17 and voted in favour of it. It therefore endorses the provisions of paragraphs 2 and 3 of the resolution.

2. Accordingly, the Government of Algeria has neither promulgated nor applied any laws and/or regulations whose extraterritorial effects undermine the sovereignty of other States.

ARMENIA

[Original: English]

[16 June 1997]

In the Armenian legal regime there is no law or measure of the kind referred to in the preamble to General Assembly resolution 51/17.

AUSTRALIA

[Original: English]

[31 July 1997]

1. Australia does not apply any laws or measures of the kind referred to in the preamble to resolution 51/17.

2. Australia has consistently expressed its principled opposition to the promulgation and application, by States Members of the United Nations, of laws and measures whose extraterritorial effects affect the sovereignty of other States, the legitimate interest of entities or persons under their jurisdiction as well as the freedom of trade and navigation. In its view, such laws and measures are not justified by the principles of international law and comity.

BARBADOS

[Original: English]

[8 August 1997]

1. The Government of Barbados has no laws which in any way restrict the freedom of trade and navigation with Cuba.

2. Further, Barbados has consistently voted in favour of the resolution entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" since the resolution was first introduced in the General Assembly during its forty-sixth session, in 1991.

BELARUS

[Original: Russian]

[8 August 1997]

1. The Republic of Belarus is interested in the peaceful settlement of the American-Cuban disagreement by means of negotiations and in the creation of favourable conditions for free and unrestricted trade development and economic cooperation between Cuba and all other countries, including the United States of America.

2. In conformity with its obligations under the United Nations Charter and the norms of international law, the Republic of Belarus has not adopted and does not have any laws and measures of the kind referred to in the preamble of resolution 51/17, and reaffirms its adherence to the principles of freedom of trade and navigation.

BOLIVIA

[Original: Spanish]

[15 July 1997]

The Government of the Republic of Bolivia has not adopted any laws or measures of the kind referred to in the resolution. Consequently, there are no provisions, measures or laws which the Government of Bolivia would have to repeal in this regard.

BRAZIL

[Original: English]

[26 March 1997]

1. Brazil reiterates that discriminatory trade practices and extraterritorial application of domestic laws run counter to the need for promoting dialogue and ensuring the prevalence of the principles and purposes of the Charter of the United Nations.

2. In accordance with resolution 51/17 and preceding General Assembly resolutions on the same item, Brazil has not promulgated or applied any law, regulation or measure the extraterritorial aspects of which could impinge upon

the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation.

3. Brazil's legal system does not recognize the validity of the application of any unilateral measure with extraterritorial effects. Companies located in Brazil are subject exclusively to Brazilian legislation.

4. Measures by any country which violate the provisions of resolution 51/17 and which attempt to compel the citizens of a third country to obey foreign legislation affect the interests of the international community as a whole and violate generally accepted principles of international law. They should be reviewed and changed, where appropriate, in order to bring them into conformity with international law.

5. In this context, the so-called "Cuban Democracy Act" of 1992 and "Cuban Liberty and Democratic Solidarity Act" of 1996 are generally considered contrary to international law, in particular to the constituent act of the World Trade Organization. They run against the basis of the multilateral trade system and should be urgently reviewed.

CAPE VERDE

[Original: English]

[26 August 1997]

The Government of Cape Verde has not taken any measure in contravention of General Assembly resolution 51/17 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".

CHINA

[Original: English]

[18 August 1997]

1. The Government of China has all along opposed the practice of wilfully resorting to sanctions in handling State-to-State relations. The blockade and sanctions imposed by the United States of America on Cuba over the past three decades has not only brought difficulties to Cuba's economic and social development, seriously hurting the Cuban people, especially the health and well-being of women and children of the country, but also adversely affected the normal trade and economic exchanges of many other countries with Cuba, thus seriously infringing upon their legitimate rights and interests.

2. The Government of China maintains that sovereign equality, non-interference in each other's internal affairs and other norms governing international relations must be respected, and that each country is entitled to choose its own

social system and mode of development in the light of its specific national conditions. No other country has the right to interfere therein.

3. The Government of China is of the view that differences and problems between States should be settled through dialogue and negotiations conducted on an equal footing, and that the United States of America should, in accordance with the purposes and principles of the Charter of the United Nations and the spirit enshrined in the relevant General Assembly resolutions, immediately put an end to its economic, commercial and financial embargo against Cuba and enter into dialogue with Cuba on the relevant dispute on the basis of equality and mutual respect for sovereignty so as to bring about a solution.

COLOMBIA

[Original: Spanish]

[23 May 1997]

1. Colombia maintains its position of respect for the principles of self-determination of peoples and non-intervention in the internal affairs of States and rejection of the claim of any State to apply outside its territory legal provisions that affect third countries.

2. Colombia has endorsed the statements by the Rio Group and the Association of Caribbean States regarding the United States legislative initiative entitled the Cuban Liberty and Democratic Solidarity Act, the communiqué of the Movement of Non-Aligned Countries of 19 March 1996 on the Helms-Burton Act, the communiqué of the Ministers for Foreign Affairs and heads of delegation of the Movement of Non-Aligned Countries at the meeting of the Ministerial Committee on Methodology held at Cartagena, Colombia, on 15 and 16 May 1996, and other communiqués issued by regional bodies rejecting unilateral coercive measures as a means of pressuring States.

CUBA

[Original: Spanish]

[22 July 1997]

1. During the past five years the General Assembly has rejected the promulgation and enforcement by Member States of legislation whose extraterritorial effects have an impact on the sovereignty of other States and the legitimate interests of entities or individuals under their jurisdiction and on free trade and navigation.

2. In its resolutions 47/19, 48/16, 50/10 and 51/17 the Assembly reiterated its appeal to all States to refrain from promulgating and applying measures of that kind and to take the necessary steps to repeal or invalidate them as soon as possible.

3. The Government of the United States of America has not only deliberately ignored the opinion and decisions of the international community and the purposes and principles of international law and the Charter of the United Nations, but has also decided to step up its economic, commercial and financial blockade against Cuba, in this case by means of the law known as the Helms-Burton Act, whose scope exceeds that of all previous legislation by grouping together, intensifying and conferring legal status on all earlier measures and provisions relating to the blockade.

4. The aforementioned Act, which seeks forcibly to stifle the Cuban social and economic system through the application of punitive measures against sovereign countries that have decided to maintain economic relations with Cuba, was adopted despite the outright rejection with which it was greeted by the international community from its inception as a bill, and particularly by the North American allies, owing to its extraterritorial and unilateral nature and the fact that it infringes the sovereignty of States and violates the principles of international law. The true intentions of each article of the Act are set out in document A/51/355.

5. In the light of this unfortunate situation, the Government of Cuba once again draws the international community's attention to the effects on the Cuban people of the continued application of this policy over nearly four decades and of new attempts to strengthen and expand its territorial application by means of the Helms-Burton Act and other related initiatives.

6. Since the promulgation of that Act, the United States Government, through Congress and the President, has taken various steps to make the implementation of the embargo more painful and to broaden its scope.

7. There are many examples of this, including an attempt to create a Title V which, in one version, would limit the capacity of the President of the United States of America to suspend court decisions under Title III, while another version would provide for taxation of foreign companies in the United States that "traffick", to use the language of the Act, with nationalized properties in Cuba. It would also provide for the establishment of a unit in the Cuban Office of the State Department to monitor the implementation of Title IV, the establishment in Washington, D.C., of a group to compile and transmit to the State and Treasury Departments information about foreign companies that "violate" the law and the sending of threatening letters by the State Department to various foreign companies to dissuade them from investing in Cuba. The Government has also sought to make the Act international in scope. These are just a few examples.

8. During June 1997 seven amendments included in an international affairs appropriations bill were adopted out of 10 submitted to the United States House of Representatives which sought to reinforce and tighten certain provisions of the Helms-Burton Act, its extraterritorial effect and the political blockade in general. The other three amendments were contained in a bill on foreign aid reform which is still before the House.

9. The amendments passed in the United States Congress to date concern the appropriation of funds to implement the Helms-Burton and Toricelli Acts, the

provisional suspension of aid to countries supplying nuclear fuel to Cuba, the appropriation of funds for television broadcasts to Cuba aimed at destabilizing the country, stricter enforcement of immigration agreements and opposition to International Atomic Energy Agency (IAEA) assistance projects and programmes to Cuba.

10. The suspension of United States aid to countries providing economic assistance to Cuba or trading with the country on non-market terms constitutes a tightening of the restrictions imposed under Title I of the Act, which in practice seeks to restrict Cuba's economic activity with the rest of the world even further.

11. The appropriation of up to $2 million for the implementation of the Helms-Burton and Toricelli Acts would help to ensure that both items of legislation would continue to be implemented and to finance the activities of small groups in the service of a foreign Power that are attacking the Cuban nation.

12. The request to the Secretary of State to prepare a detailed report every three months on the implementation of Title IV, with specific data from those on whom sanctions had been imposed, would make it more binding upon the United States Government to continue implementing that section of the Act.

13. In the light of these facts, the Government of Cuba issued a denunciation, through the diplomatic channel, with a view to alerting the international community and international public opinion to what it considered to be a new campaign, developed in complete silence and complicity and aimed at tightening even further the iron-clad and criminal economic, commercial and blockade which the United States has maintained against Cuba for 37 years.

14. The United States Senate also passed three amendments relating to Cuba under the State Department appropriations bill, one of which broadened the scope of Title IV of the Helms-Burton Act by denying visas to those who "traffick", as the Act puts it, in United States property nationalized anywhere in the world without compensation.

15. Congress has not completed its review of these amendments, since a Congressional conference committee must reconcile the bills adopted by the House of Representatives with those adopted by the Senate, after which they must be voted on again in both houses and then submitted for the approval of the President of the United States. To date, the United States Government has maintained total silence on this subject and has done nothing at all to prevent the final adoption of these initiatives.

16. By these actions, the advocates of the Helms-Burton Act have made it clear that they will not stand for any dilution or diminishing of its impact, notwithstanding the opposition of the international community and the North American allies; indeed, they only want to modify it to make it more interventionist and extraterritorial. The Act's inconsistency with the obligations of the United States under agreements with the World Trade Organization (WTO) and the North American Free Trade Agreement have also been pointed out; the European Union even submitted a request to have the Act reviewed by the WTO Dispute Settlement Body, and a series of "antidote" or

"mirror" laws were adopted by the principal trading partners of the United States with a view to protecting themselves and halting the Act's extraterritorial effects.

17. To this end also the Cuban Parliament adopted the Act Reaffirming Cuban Dignity and Sovereignty, which once again upheld the legality, public benefit and compliance with international law of the Cuban Government's nationalizations and reaffirmed the Government's readiness to award adequate and fair compensation, on a basis of equality, respect and mutual claims, for property expropriated from individuals and legal persons who at the time held United States citizenship or nationality and had not availed themselves of the mechanisms and procedures under the Helms-Burton Act, a measure which was rejected by the United States Government.

18. Previous documents (A/48/448 and Add.1, A/49/398 and Add.1, A/50/401 and Add.1 and A/51/355 and Add.1) show the effects of the systematic and progressive maintenance of the blockade policy pursued by the United States of America against the Cuban economy and Cuban society. The passage of the Helms-Burton Act and other actions that the most reactionary circles in the United States Government continue to direct against Cuba are intended to intensify the effects of that policy, yet this has not prevented attempts to spread its extraterritorial effects even further by blackmailing and threatening other sovereign States.

19. Such action increasingly seeks to undermine the very foundations of the Cuban economy and obstruct the country's international economic relations by focusing on companies interested in commercial ventures aimed at reviving production in basic sectors of the Cuban economy.

20. The cumulative effect of the blockade on the Cuban economy and the waste it entails have also been rightly criticized; each year the blockade makes it necessary to spend large volumes of resources that might otherwise be used to raise the population's standard of living and for national development.

21. The Act's intimidating effect has led to delays in or the postponement of a number of economic projects in various stages of negotiation, which has had an impact on activities of vital interest to the Cuban economy.

22. The United States Government continues to deny Cuba access to its nearest market, which, it will be recalled, increases transport costs by hundreds of millions of dollars, ties up large sums in inventory and reserves and makes it impossible for the country to market its major exports, such as sugar, on the New York Stock Exchange.

23. In addition, vessels shipping goods for Cuba continue to be denied access to United States ports for 180 days, a flagrant violation of the freedom of navigation, in an effort to obstruct and destabilize the flow of supplies to the country as well as Cuba's international trade.

24. This situation, which was described in detail in document A/51/355 and Add.1, has significantly increased the cost of keeping the island supplied, since the hiring of shippers with adequate equipment and sufficiently in advance

is made difficult by the limited availability of ships. This leads to additional expenses for storage and stays in port, the cancellation or duplication of contracts and interruptions in supplies.

25. In the meantime, shippers, citing the risk of retaliation by the United States for having provided services to Cuba, include surcharges of anywhere from 15 to 30 per cent over prevailing market rates and, in the case of petroleum products, up to 35 per cent a barrel.

26. In 1996, total shipping charges for three products alone (wheat, maize and flour) were $13.4 million higher than they would have been had Cuba not been denied access to United States markets.

27. The United States Government continues to prohibit trade between Cuba and subsidiaries of United States companies based in third countries, which are subject to the laws and regulations of those countries. This situation not only violates the sovereignty of those countries and affects their economic interests but severely disrupts the Cuban economy, not only because it forces Cuba to find new suppliers who generally demand higher prices for their goods but also because it is sometimes impossible to find substitutes or alternative sources of supply, leading to delays and interruptions in production and services.

28. In 1996 alone in the area of food imports the difference between the prices of goods purchased on the Cuban market and prices on the United States market, to which Cuba has no access, for four items (wheat, powdered milk, oilseed meal and maize) totalled to $43.8 million.

29. About $2.2 million worth of additional costs for inputs, spare parts, repairs and maintenance were incurred the same year in the civil engineering industry as a result of price differentials.

30. Merely in terms of additional expenditures for shipping, price differentials and surcharges above market prices, the annual damage to the Cuban economy from the United States blockade amounted to hundreds of millions of dollars, a figure that varies in relation to the trade volume each year.

31. The tightening of the blockade has also reinforced the special conditions Cuba must meet in order to market its products internationally, based on the so-called "Cuba risk", which continue to have a negative impact on the availability and terms of insurance to cover commercial operations with Cuba.

32. When several insurance companies with which Cuban enterprises had done business for years were acquired by United States insurance companies, they were not allowed to fulfil their contracts with these Cuban enterprises or transfer funds, owing to them.

33. Moreover, as a result of the maintenance of the blockade, Cubans have been unable to make bank transfers freely in United States dollars when they bill their export customers, which means a loss of about 3.5 per cent of the amount in question in bank charges and currency exchange fees.

34. The Helms-Burton Act has increased the cost of financing and has delayed the granting of credits. It also interrupted financial operations linked to the sugar beet harvest, damaging one of our main export sectors and an important source of income.

35. This situation continues to limit access by the Cuban economy to short-term credits, since insurers charge Cuban enterprises high interest rates because of the "Cuba risk", which in practice prevents the enterprises from obtaining such credits.

36. The tightening of the blockade meant that anticipated financial flows were interrupted for months, causing additional damage to our economy and especially affecting food and fuel imports.

37. The world economy has been experiencing an accelerated globalization of production and technological linkages through greater capital flows within and among enterprises. In particular, in recent years direct investment flows, strategic alliances, acquisitions and large-scale mergers between corporations at the international level has reached unprecedented speed and proportions, mainly among developed countries, the biggest foreign investor being the United States.

38. This trend has a direct impact on the increase of the blockade's extraterritorial scope and negative economic impact on Cuba, for its long-standing relations with suppliers of inputs for various production sectors, services and consumption were suddenly interrupted when these firms were acquired by or merged with United States enterprises, even where the United States was not a majority shareholder.

39. Even in cases of enterprises in which the United States has no financial interest, if the products sold by these firms contain any input or use any technological process originating in the United States, the product cannot be sold in Cuba.

40. Where the share of these inputs in the product's value is small, and where a licence to sell them could theoretically be authorized under United States law, this licence is generally denied or the bureaucratic red tape involved acts as a disincentive to potential suppliers.

41. The harm done to all sectors of the Cuban economy by this situation is considerable, affecting both supplies of inputs and buyers of Cuban exports.

42. The consequences of this systematic United States aggression are especially onerous because of the restrictions imposed on the sale of food, medicine and medical supplies and equipment to Cuba. Most of Cuba's imports until 1992 from United States subsidiaries located in third countries were food and medicine, a form of trade that has been prohibited since that year.

43. The United States is the world leader in research and development for new drugs and sophisticated medical equipment, in the global marketing of these products - accounting for about 50 per cent of new medicines sold on the international market - and in high technology in the production of medical equipment.

44. Patents on drugs technologies and equipment are valid in the United States for 17 years. Under United States law, Cuban citizens have not been allowed to buy drugs patented by the United States since 1979, which means that they have no access to third-generation antibiotics and a number of products for the treatment of acquired immunodeficiency syndrome, to cite only two examples. This compounds the situation described above concerning the prohibition of sale by subsidiaries.

45. The process of buy-outs and large-scale mergers in the field of producers and marketers of drugs and medical supplies and equipment, among other inputs for the health sector, is becoming particularly extensive and dynamic, a fact which has resulted in more interruptions of relations with traditional suppliers in that sector than in other sectors. This has produced very severe consequences in the Cuban health sector.

46. A report published in March 1997 by a prestigious United States health organization in Washington, D.C., the American Association for World Health, gives an exhaustive analysis of the damage caused by the blockade to the health and nutrition of the Cuban people.

47. Recognized specialists from this organization and from the Pan American Health Organization visited various hospitals and specialized health agencies in Cuba, interviewed doctors and patients and studied the practice of Cuban medicine and its inputs, available technology, shortcomings and deficiencies, and the incidence of disease and pathology in the population.

48. The reason that this damage has not been even greater and that Cuba's health indicators are as good as those of many developed countries is that the Cuban Government has made efforts to support this sector by allocating resources to public nutrition and health on a priority basis, and also that the people working in this field are well-trained professionals with a humanitarian vocation.

49. Spokespersons for the United States Government have pointed out that the export of medicines to Cuba is not prohibited and that a mechanism for granting licences to sell them has been established.

50. In fact, the practice in recent years has been that officials of the United States Departments of Commerce and the Treasury have misinformed and discouraged those who have tried to obtain licences to export medicines, medical supplies and equipment or have simply denied requests for such licences. The pharmaceutical companies themselves have been victims of systematic delays in receiving replies to their requests for licences or their applications have simply been rejected.

51. The United States has also placed conditions on granting licences to export medicines to Cuba, such as on-site inspection and other requirements, which are unacceptable to any sovereign nation as well as being impractical.

52. The few cases where licences have been granted to supply certain drugs, under the sponsorship of the International Committee of the Red Cross or a diplomatic mission, have been handled on an individual basis, and not for the

whole shipment but for partial shipments, after a complex and lengthy process lasting on average about seven months, which has discouraged the initiative of some organizations that were planning to donate medicine to Cuban hospitals.

53. The United States Government's blockade against Cuba is an unusual and unique case, since it even limits people's access to food and to medicines that might save their lives. Even in the case of war between countries, this practice is rejected and prohibited by various international conventions and treaties, many of which the United States has signed. Moreover, the blockade violates a number of international human rights instruments and conventions, including the Charter of the United Nations.

54. Similarly, it is no accident that the United States Government, in its escalating hostility towards Cuba, has also resorted to biological aggression by introducing plagues and vectors to spread disease and deprive the Cuban population of food, compounding the harm already caused by the blockade.

55. In that regard, in April 1997 the Government of Cuba made a formal complaint to the United Nations General Assembly (A/52/128) that it had again been the victim of biological aggression, for it had reliable evidence that a plague known as "thrips palmi" had appeared on its national territory after an unknown substance had been sprayed from an aircraft operated by the United States Department of State on 21 October 1996.

56. Evidently, for the most reactionary circles of the United States Government, no policy towards Cuba, even the most inhumane, is tough enough.

57. From the time of its imposition until 1995, the economic, commercial and financial blockade by the United States cost Cuba, according to estimates made by experts, over $60 billion worth of damage. Each year, this figure is increasing, and as a result of the tightening of the blockade and the globalization which is contributing to its extension, together with the surcharges the country has to pay to those who venture to trade with Cuba, represents a growing drain on the financial resources available for the import of food, medicines or raw materials for their production, and for other important sectors of the economy to obtain the earnings the country needs.

58. Although these actions are meant to limit the Cuban economy's development by stifling its foreign economic relations, the Cuban nation reaffirms its desire to carry out its economic restructuring process to enhance its development while maintaining its existing levels of social development.

59. Unfortunately, the implementation of policies of this type is becoming one of the most salient features of the globalization of the world economy in recent years.

60. According to a report issued in March 1997 by the National Association of Manufacturers, a large Washington-based association of companies and their subsidiaries in industry and trade, the United States Government enacted a total of 61 laws and executive orders from 1993 to 1996 authorizing the use of unilateral economic sanctions against 35 countries for foreign-policy purposes.

61. In the light of this evidence, the Government of Cuba feels it has a moral obligation to alert the international community once again to the dangers threatening the future and stability of international relations if effective steps are not taken to eliminate the proliferation of measures such as this blockade, which, besides affecting the well-being and health of a people, attempts to limit the sovereignty of other States and to ignore the growing call throughout the world that it be lifted.

62. The Government of the Republic of Cuba hopes that the international community will be more forceful in condemning this policy and in taking appropriate steps to put an end to it.

63. A nation's right to its own autonomous development is a basic human right that must be respected.

CYPRUS

[Original: English]

[8 July 1997]

Cyprus does not favour any attempt to enforce laws on its territory that are promulgated by other States. It is therefore opposed to the adoption of any measures that have extraterritorial application on its territory.

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

[Original: English]

[1 April 1997]

1. The Government of the Democratic People's Republic of Korea is of the position that any extraterritorial laws and measures which could violate the sovereignty of other States and the freedom of trade and navigation should be repealed immediately as they contravene the Charter of the United Nations and international law.

2. There exist no such laws and measures in the Democratic People's Republic of Korea. The Government of the Democratic People's Republic of Korea is making every effort to develop economic and trade relations with Cuba.

3. The Government of the Democratic People's Republic of Korea will continue to make all possible efforts for the full implementation of the resolution.

ECUADOR

[Original: Spanish]

[14 March 1997]

With reference to paragraph 4 of General Assembly resolution 51/17, Ecuador does not impose any kind of sanction against Cuba and maintains normal diplomatic, commercial and cultural relations with it.

ESTONIA

[Original: English]

[4 April 1997]

Estonia has not adopted any laws or measures of the kind referred to in paragraphs 2 and 3 of the General Assembly resolution 51/17.

GAMBIA

[Original: English]

[12 August 1997]

The Gambia supports the ending of the economic, commercial and financial embargo imposed by the United States of America against Cuba in accordance with the principles of the Charter of the United Nations and international law. In the pursuit of international cooperation, no State should adopt unilateral coercive measures or legislations whose extraterritorial effects could damage the sovereignty and economic well-being of other States.

GUYANA

[Original: English]

[3 July 1997]

Guyana fully supported the resolution and voted in its favour. Guyana, therefore, is committed to paragraphs 2, 3 and 4 of resolution 51/17 and honours its mandate.

IRAQ

[Original: Arabic]

[11 August 1997]

1. The United States of America is continuing to ignore the will of the international community as represented in successive resolutions adopted by the United Nations General Assembly. It does so by persisting in the maintenance of a comprehensive economic, commercial and financial embargo against the Cuban people and by depriving it of basic rights enshrined in many international covenants and conventions and, in particular, of the right to development and progress.

2. This attitude is in flagrant violation of the principles and norms of international law, the Charter of the United Nations and the Organization's resolutions, it constitutes open interference in matters that pertain to the domestic authority of the Cuban Government, and it has had an adverse impact on the Cuban people.

3. Iraq, which has expressed its rejection of the measures taken by the United States of America against Cuba, has not promulgated or applied any laws or measures of the kind referred to in General Assembly resolution 51/17. Indeed, the people of Iraq has been suffering for more than seven years from the coercive measures imposed on it in the form of an embargo on all basic civilian needs, including food and medicine, and is being prevented from using its own resources to secure its humanitarian requirements.

IRAN (ISLAMIC REPUBLIC OF)

[Original: English]

[11 August 1997]

1. Resorting to illegal and coercive measures such as imposing unilateral sanctions and enacting coercive economic laws against other States in order to achieve illegitimate objectives is a new form of expansionism in international relations. In this connection, the coercive measures exercised by the United States, including the enactment of the laws known as the Helms-Burton Act and the D'Amato Act, are clear indications of a dangerous trend in international relations where the basic rules of international law, the provisions of the Charter of the United Nations as well as the principle of the freedom of international trade are violated.

2. The decisive response pronounced by Members of the United Nations and several international and regional organizations against the policy of unilateralism, as manifested in the form of authoritarianism, illustrates the profound anxiety and sensitivity of the international community towards the proliferation and the adverse consequences of such coercive and illogical measures. Unilateral measures with extraterritorial implications not only do not help in restoring law, peace and stability in the world but would pave the

ground for the creation of more tension and instability which, in turn, threaten international peace and security.

3. The Islamic Republic of Iran believes that the imposition of unilateral sanctions and the application of coercive economic measures against States Members of the United Nations are in contravention of the purposes and principles of the Charter of the United Nations, international law and the relevant regulations of the World Trade Organization. Such actions are clear examples of interference in the internal and external affairs of other States which essentially weaken the basis of the inter-State relations and seriously threaten international cooperation.

4. The Islamic Republic of Iran, as a Member of the United Nations and a concerned State, while reiterating the principle of the inalienable right of States to choose their political, social, cultural and economic systems, calls upon the Member States to resist such unlawful actions and to make every effort to eliminate their adverse impacts; and thus preserve the purposes and principles of the Charter of the United Nations, in particular those pertaining to national sovereignty, political independence, territorial integrity and non-interference in the internal affairs of other States.

JAMAICA

[Original: English]

[9 July 1997]

1. Jamaica voted in favour of resolution 51/17 adopted by the General Assembly on 12 November 1996 and has consistently voted in favour of the resolution entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" since it was first introduced in the General Assembly during its forty-sixth session in 1991. On various occasions and in different forums, Jamaica has supported calls urging an end to the economic, commercial and financial measures and actions against Cuba.

2. Further, Jamaica has neither promulgated nor applied any laws or measures of the kind referred to in the preamble to resolution 51/17 and remains firmly committed to the principles of international law and in particular to freedom of trade and navigation. The Government of Jamaica remains opposed to the extraterritorial application of national legislation which would seek to impose artificial barriers to trade and which run counter to international law and the sovereign equality of States.

3. In line with a policy of mutual respect, good-neighbourliness and respect for the principles enshrined in the Charter of the United Nations and international law, Jamaica has sought to expand and strengthen its relations with Cuba.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

[Original: English]

[1 July 1997]

The Government of the Lao People's Democratic Republic regrets very much that the economic, commercial and financial embargo against Cuba by the United States of America is still in force. It has been tightened even further with increasingly extraterritorial implications. As far as it is concerned, the Lao People's Democratic Republic, mindful of its obligations deriving from the Charter of the United Nations and international law, has neither promulgated nor implemented laws and measures of this type. In our view, these laws and measures affect the sovereignty of other States as well as the freedom of trade and navigation.

LEBANON

[Original: English]

[25 August 1997]

The Government of Lebanon voted in favour of General Assembly resolution 51/17 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" and thus supports ending the embargo and freezing measures that have been taken in this regard which affect the freedom of international trade and maritime transport as well as general economic transactions.

LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]

[4 June 1997]

1. Consistent with its support for General Assembly resolution 51/17, the Libyan Arab Jamahiriya is opposed to the economic, commercial and financial embargo imposed by the United States of America against Cuba on the grounds that it contravenes the Charter of the United Nations and the Organization's purposes and principles stipulating that Members shall settle their disputes by peaceful means.

2. In compliance with the purposes and principles of the Charter of the United Nations and out of respect for the norms of international law, the Libyan Arab Jamahiriya has not promulgated or applied any laws such as those referred to in the relevant paragraphs of General Assembly resolution 51/17.

3. Since 1986, the Libyan Arab Jamahiriya has been suffering from measures imposed on it by the United States of America, iniquitous measures similar to those imposed against Cuba. They have included the freezing of Libyan assets in

American banks, the imposition of restrictions on the transfer of technology to Libya, and a prohibition on Libyan students pursuing advanced studies in technology at American universities. The United States Government has recently strengthened these measures under Public Law 3107 of 19 June 1996, which imposes penalties on persons or companies investing 40 million dollars or more. Such investment might have made a major and direct contribution to strengthening Libya's ability to develop its petroleum resources.

4. Since the imposition of coercive measures is incompatible with the purposes of the United Nations and the principles of international law, the Libyan Arab Jamahiriya reaffirms the provisions of paragraphs 2 and 3 of Assembly resolution 51/17, and it urges the States concerned to refrain from promulgating and applying laws and measures of the kind imposed on Cuba or any other country or to take the necessary steps to repeal or invalidate such laws and measures.

LIECHTENSTEIN

[Original: English]

[30 July 1997]

The Principality of Liechtenstein has not promulgated or applied any laws or measures of the kind referred to in the preamble to resolution 51/17. The Government of Liechtenstein is furthermore of the view that legislation whose implementation entails measures or regulations having extraterritorial effects is inconsistent with generally recognized principles of international law.

LUXEMBOURG

[Original: French]

[24 July 1997]

The position of the Government of Luxembourg with regard to General Assembly resolution 51/17 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" is reflected in the communication dated 19 June 1997 from the Netherlands on behalf of the Presidency of the Council of Ministers of the European Union (see below).

MALAYSIA

[Original: English]

[29 July 1997]

1. For some years now, Malaysia has voted in favour of General Assembly resolutions calling for an end to the embargo on Cuba, the most recent of which was resolution 51/17. Malaysia does not promulgate or apply any law or measure of the kind referred to in paragraphs 2 and 3 of resolution 51/17.

2. Malaysia firmly believes that there is no justification for the United States to take unilateral trade measures against Cuba that also impinge upon the right of other States to engage freely in international trade and navigation. The promulgation of the Helms-Burton Act in the United States clearly contravenes the principles and objectives of the World Trade Organization.

3. There are various international declarations and resolutions against the application of the Act. Malaysia fully supports the recent decision adopted by the Ministers for Foreign Affairs of the Movement of Non-Aligned Countries at New Delhi on 8 April 1997, in which they, inter alia, "called upon the Government of the United States of America to put an end to the economic, commercial and financial measures and actions against Cuba which, in addition to being unilateral and contrary to the Charter of the United Nations and international law, and to the principle of good-neighbourliness, cause huge material losses and economic damage"; requested "strict compliance with General Assembly resolutions 47/19, 48/16, 49/9, 50/10 and 51/17"; and expressed "deep concern about new legislation enacted by the Congress of the United States that would intensity the embargo against Cuba and widen its extraterritorial nature" (A/51/912-S/1997/406, annex, para. 149).

4. The application of United States domestic laws whose extraterritorial effects infringe upon the sovereignty and legitimate interests of other States is inconsistent with the intentions of the Charter of the United Nations. Furthermore, the continuous measures adopted by the United States against Cuba are contrary to the letter and spirit of the relevant General Assembly resolutions in this regard. In the absence of any move by the United States to repeal the relevant Acts, Member States may be justified in concluding that the United States has adopted a negative attitude by ignoring the will and expressed wish of members of the General Assembly.

MEXICO

[Original: Spanish]

[22 July 1997]

1. The Government of Mexico, in full respect for the sovereignty of States and the right of self-determination of peoples, and the norms and principles which govern peaceful and friendly relations and cooperation among nations, believes that it is for the people of Cuba alone, in exercise of their inalienable rights, to continue to determine their own political, economic and social organization in a free, sovereign and independent manner. It has therefore openly expressed its rejection of the use of force, and of the imposition of political and economic sanctions and the regime of political and diplomatic isolation, against Cuba.

2. Mexico supported the resolutions adopted by the General Assembly of the United Nations concerning the necessity of ending the embargo and those resolutions which maintain that the embargo is contrary to the principles of the Charter of the United Nations.

3. Mexico has also indicated that its decision to establish trade relations with other countries is a full expression of its sovereignty and is therefore not subject to the will of third States. Accordingly, following the promulgation of the Cuban Liberty and Democratic Solidarity Act, also known as the Helms-Burton Act (12 March 1996), the Government of Mexico stated that the scope of that Act is unacceptable in the light of international law, since it is a violation of the purposes and principles of the Charter of the United Nations and contrary to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, contained in resolution 2625 (XXV), which was adopted unanimously by the General Assembly of the United Nations in 1970. It is also contrary to the provisions of the constituent act of the World Trade Organization.

4. Moreover, on 19 September 1996, the Mexican Congress unanimously adopted the Act on the Protection of Trade and Investment from Foreign Laws which are Contrary to International Law, better known as the "Antidote Law", which entered into force on 24 October 1996. Article 1 of that Act prohibits individuals or legal entities, public or private, residing in national territory or subject to Mexican law, from carrying out acts that would affect trade or investment, when such acts are the result of the extraterritorial effect of foreign laws.

MYANMAR

[Original: English]

[5 August 1997]

1. Myanmar continues to maintain its consistent policy of strict compliance with the purposes and principles enshrined in the Charter of the United Nations and of scrupulous respect, among others, for the principles of the sovereign equality of States, non-intervention and non-interference in the internal affairs, freedom of trade and international navigation.

2. The Union of Myanmar is of the view that the promulgation and application by Member States of laws and regulations the extraterritorial effects of which affect the sovereignty of other States and the legitimate interest of entities or persons under their jurisdiction as well as the freedom of trade and the freedom of navigation violate the universally adopted principles of international law.

3. In this connection, Myanmar is deeply concerned about the extraterritorial aspects of the laws enacted against the Republic of Cuba.

4. In conformity with the above, the Union of Myanmar has not promulgated any laws and regulations of the kind referred to in the preamble to General Assembly resolution 51/17.

NAMIBIA

[Original: English]

[30 July 1997]

1. The Republic of Namibia has no legislation with extraterritorial effect, since it would be a violation of the sovereign [right] of each nation State to exist and therefore contrary to [the stated aims of] foreign policy.

2. The Government of the Republic of Namibia upholds the principles of non-interference in the internal affairs of other States.

3. The Government of the Republic of Namibia urges both the United States of America and Cuba to begin serious negotiations to resolve all aspects of the long-standing dispute between them in the interest of peace, trade, development and good-neighbourliness.

4. The Namibian Government views the Helms-Burton Act as a blatant violation of the sovereignty of States, a serious breach of the principles of the Charter of the United Nations, international law, freedom of trade and navigation, and as a violation of the rules of the international trade system.

5. The international community, of which Namibia is a part, has for the past 35 years continuously and increasingly expressed its total dissatisfaction with and rejection of the unilateral embargo against the people of Cuba.

NETHERLANDS

(representing the Presidency of the Council of Ministers of the European Union)

[Original: English]

[19 June 1997]

1. The European Union and its member States have made clear their opposition to the extraterritorial effects of the United States embargo against Cuba contained in the United States legislation known as the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (the so-called Helms-Burton Act).

2. The Council of Ministers of the European Union adopted a regulation in November 1996 making compliance with this legislation an offence.

3. While the European Union and its member States consider the United States trade policy towards Cuba primarily a matter for the Governments of the two countries concerned, they remain concerned about the extraterritorial effects of the United States embargo and the Helms-Burton Act on European Union Member States, companies, individuals and trading interests.

NORWAY

[Original: English]

[27 June 1997]

Norway has not enacted any economic embargo against Cuba or adopted other measures contradictory to General Assembly resolution 51/17.

PANAMA

[Original: Spanish]

[25 August 1997]

1. The Republic of Panama supported General Assembly resolution 51/17 and has stated that both the adoption and the implementation of such measures against Cuba directly affect freedom of trade and navigation and can have an adverse effect on international relations.

2. Accordingly, the Government of Panama has not taken legislative or other measures to impose economic sanctions against Cuba which would undermine freedom of trade and navigation, in conformity with its obligations under the Charter of the United Nations and international law which establish, inter alia, freedom of trade and navigation.

PERU

[Original: Spanish]

[14 July 1997]

1. In Peru, no law or measure whatsoever of the kind referred to in resolution 51/17 either exists or is applied.

2. The position of the Government of Peru on this matter is based on the joint measures adopted by the Permanent Mechanism for Consultation and Concerted Political Action (Rio Group); on the Ibero-American Summits; on the Declaration on Respect for the Personality, Sovereignty and Independence of States adopted by the General Assembly of the Organization of American States on 2 June 1997; and on resolution CJI/RES/II-14/96, adopted unanimously by the Inter-American Juridical Committee, issued pursuant to resolution AG/RES.1364 (XXVI-0/96) of the General Assembly of the Organization of American States. In this connection, the Government of Peru rejects the unilateral and extraterritorial application of national laws and expresses its concern at the trend of imposing domestic laws, some of which are a violation of existing international law, on other countries.

3. The Government of Peru does not agree with unilateral positions aimed at influencing the internal political process of a given State and thereby

infringing on its sovereignty. It believes that due respect for the national constitutional order is fundamental to international relations.

4. In the specific case of the so-called Helms-Burton Act, the Government of Peru welcomes the suspension of the application of its most controversial title and believes that this is a first step in the right direction. We hope to see substantial progress in the form of additional and supplementary measures.

5. Lastly, the Government of Peru wishes to reiterate its firm and steadfast adherence to the common objectives of democracy, respect for human rights and economic freedom.

RUSSIAN FEDERATION

[Original: Russian]

[24 July 1997]

1. In supporting since 1994 the General Assembly resolution on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba, the Russian Federation takes account of the firm consensus on that matter among the Members of the United Nations.

2. Almost the entire world community regards the continuing commercial and economic embargo against Cuba imposed by the United States as a manifestation of the outdated mentality of confrontation between blocs. Most of the States of the world express their disagreement with the attempts by the United States to tighten up the embargo by associating the international community with it through the implementation of the Cuban Liberty and Democratic Solidarity Act of 12 March 1996. This Act is rightly described as discriminatory and incompatible with the norms of international law and the principles of free trade.

3. The recent attempts by the Congress of the United States to strengthen the sanctions regime against Cuba, and also to exert pressure on third countries and certain international organizations with a view to curtailing their cooperation with Cuba, give rise to serious concern on the part of the Russian Federation.

4. Our view of the matter is that the lifting of the commercial, economic and financial embargo of the United States of America against Cuba in particular, and the normalization of United States-Cuban relations in general, would promote a more healthy international situation and would facilitate Cuba's inclusion in world economic relations and thus the advance of Cuban society towards transformation.

5. As far as the Russian Federation directly is concerned, it is firmly guided by the principles of the sovereign equality of States, non-interference in their internal affairs and freedom of international trade and navigation mentioned in the resolution and supports, and intends to continue to develop normal commercial and economic ties with Cuba based on mutual interest and reciprocal advantage and put into practice in strict conformity with generally accepted

international norms without any form of discrimination and on the basis of world prices.

SAN MARINO

[Original: English]

[27 May 1997]

The Republic of San Marino does not have any laws regarding this question and has not taken any measures to put an end to the embargo.

SLOVENIA

[Original: English]

[2 July 1997]

1. Slovenia has not promulgated or applied any laws or measures of the kind referred to in the preamble to General Assembly resolution 50/10.

2. This statement continues to be relevant also with regard to General Assembly resolution 51/17.

SOLOMON ISLANDS

[Original: English]

[16 July 1997]

Solomon Islands, a small island developing State, reaffirms its obligations under the Charter of the United Nations and international law to support freedom of trade and navigation. Solomon Islands voted in favour of resolution 51/17.

SOUTH AFRICA

[Original: English]

[1 August 1997]

1. South Africa has always expressed its opposition to the unilateral punitive measures taken by the United States against Cuba and which run counter to the efforts of the majority of States which support constructive interaction with Cuba.

2. South Africa normalized its diplomatic relations with Cuba in 1994 when Cuba opened an embassy in this country, followed by the establishment of a South African embassy in Havana in 1995.

3. Since re-entering the United Nations, South Africa has consistently opposed all aspects of the embargo imposed by the United States of America against Cuba by voting in favour of the United Nations resolution in this regard and has expressed its concern in multilateral forums with respect to the Helms-Burton legislation.

4. South Africa interacts with Cuba on the political, economic and cultural levels. Such constructive interaction is consistent with South Africa's relations with all other countries within the region of Latin America and the Caribbean.

5. South Africa joins the majority of States Members of the United Nations in opposing the extraterritorial nature of the legislation as an intrusion on Cuba's sovereign right to conduct its foreign relations.

6. South Africa has opposed the United States embargo in its entirety and its attendant negative implications for the people of Cuba.

SPAIN

[Original: Spanish]

[23 July 1997]

The position of the Government of Spain with regard to General Assembly resolution 51/17 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" is reflected in the communication dated 19 June 1997 from the Netherlands on behalf of the Presidency of the Council of Ministers of the European Union (see text above).

SUDAN

[Original: English]

[24 July 1997]

The Government of the Sudan voted in favour of General Assembly resolution 51/17 and will abide fully with the letter and spirit of the resolution in accordance with the conviction of the Government of the Sudan that it is necessary to end the economic, commercial and financial embargo imposed on Cuba. The Government of the Sudan, in principle, rejects the imposition of economic sanctions on developing countries.

SURINAME

[Original: English]

[14 August 1997]

The Government of the Republic of Suriname has not promulgated or applied laws or measures of the kind referred to in the preamble to resolution 51/17.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

[3 April 1997]

The Syrian Arab Republic, in accordance with its position of principle on the item entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", voted in favour of General Assembly resolution 51/17, which reaffirms the necessity of compliance with the purposes and principles enshrined in the Charter of the United Nations and the principles of the sovereign equality of States, non-interference in their internal affairs and freedom of international trade and navigation. It also urges States to take the necessary steps, as soon as possible, to end the economic, commercial and financial embargo that has been maintained against Cuba for more than 30 years.

TRINIDAD AND TOBAGO

[Original: English]

[18 August 1997]

Trinidad and Tobago has not adopted any laws or measures restricting trade or other economic relations with Cuba.

UKRAINE

[Original: English]

[3 June 1997]

1. The Government of Ukraine has pursued a policy of strict compliance with the purposes and principles enshrined in the Charter of the United Nations, in particular the principles of sovereign equality of States and non-interference in their internal affairs.

2. Ukraine has not adopted any legislation or regulations whose extraterritorial effects might affect the sovereignty of other States and the

legitimate interests of entities of persons under Ukraine's jurisdiction, or the freedom of trade and international navigation.

3. The Government of Ukraine does not accept the [imposition by the] United States of economic measures as a means of achieving political aims and upholds in its relations with other countries the fundamental principles of the Charter of the United Nations, the norms of international law and the freedom of trade and navigation.

VIET NAM

[Original: English]

[5 June 1997]

1. The General Assembly of the United Nations had adopted many resolutions requesting the United States of America to end its policies and laws of economic, commercial and financial blockade and embargo against the Republic of Cuba because they are contrary to the basic principles of the Charter of the United Nations and seriously violate international law, especially that of freedom of international trade and navigation. The resolutions of the General Assembly, especially resolution 51/17 recently adopted by an overwhelming majority, reflect the deep concern of the States Members of the United Nations and the entire international community and their strong opposition to the extraterritorial and confrontational nature of those policies and measures of the United States against Cuba. They also reflect the common desire to build healthy international relations and cooperate for development among States on the basis of equality, non-discrimination of political systems and respect for the right of every nation to choose the way of development.

2. The promulgation of the Helms-Burton Act by the United States of America and its strengthening of the embargo measures against the Republic of Cuba run counter to the common desire of States and have caused greater difficulties for the Cuban people in their normal life and efforts for development. Those measures have also adversely affected the economic, commercial and financial relations of many countries with the Republic of Cuba. The Helms-Burton Act has been strongly opposed by many countries.

3. It is the view of Viet Nam that the dispute between the United States and the Republic of Cuba should be resolved through dialogue and negotiation in the spirit of mutual respect, respect for independence and sovereignty, and non-interference in the internal affairs of States. Viet Nam reaffirms its strong support for the resolutions adopted by the General Assembly of the United Nations with a view to immediately ending the blockade and embargo against the Republic of Cuba.

4. Viet Nam reaffirms its solidarity with the Cuban people, sympathizes with the hardships that they have undergone and will continue to assist the Cuban people in overcoming the consequences of the above-mentioned unjust embargo policy.

III. OBSERVER MISSIONS TO THE UNITED NATIONS

HOLY SEE

[Original: English]

[14 May 1997]

1. Because of its particular nature, the Holy See does not have economic and trade relations with other States. However, by means of the articulation of its clear and principled stand on the question of the imposition of international economic sanctions, especially by Pope John Paul II, as well as through its diplomatic activity in this area, it has sought to alleviate the distress suffered by civilian populations which are either directly or indirectly affected by the imposition of such measures. The Holy See is convinced that these considerations are particularly relevant with regard to the embargo which has been imposed upon Cuba.

2. The Holy See considers it to be legitimate for the international community to resort to economic sanctions when confronted with a specific Government which has acted in a manner which places world peace in danger. However, the Holy See holds that there are several conditions which must accompany the imposition of such sanctions: (a) sanctions may not be a means of warfare nor punishment of a people; (b) sanctions should be a temporary means of exerting pressure on Governments whose choices threaten international peace; (c) sanctions must be proportionate to the goals they hope to achieve; and (d) sanctions must always be accompanied by a dialogue between the parties involved.

3. Pope John Paul II has stated:

> "The embargo ... clearly defined by law, is an instrument which needs to be used with great discernment and it must be subjected to strict legal and ethical criteria ... [I]t is always imperative to foresee the humanitarian consequences of sanctions, without failing to respect the just proportion that such measures should have in relation to the very evil which they are meant to remedy".

4. Further, the humanitarian considerations which the Holy See applies to economic sanctions were articulated by His Eminence Angelo Cardinal Sodano, Secretary of State, who said:

> "[T]he Holy See hopes that the United Nations Security Council will be better informed about the negative effects on a humanitarian level, deriving from the application of sanctions imposed on a State in strict application of the Charter of the United Nations ... [A] mechanism should be introduced which would allow for an independent and effective control of the humanitarian consequences of sanctions and subsequently establish ways to correct these effects. The legitimate decision by the international community never dispenses with the due attention that must be paid to the concrete fate of the civilian population".

IV. REPLIES RECEIVED FROM ORGANS AND AGENCIES OF THE UNITED NATIONS SYSTEM

INTERNATIONAL MARITIME ORGANIZATION

[Original: English]

[10 April 1997]

Due note has been taken of the contents of the resolution including, in particular, paragraph 4 thereof. In accordance with its practice, General Assembly resolution 51/17 will be drawn to the attention of the IMO Council. Any action or decision taken by the IMO Council on the matter will be communicated to [the Secretary-General].

OFFICE OF THE RESIDENT COORDINATOR OF THE UNITED NATIONS SYSTEM'S OPERATIONAL ACTIVITIES FOR DEVELOPMENT

[Original: English]

[23 June 1997]

1. From a general perspective, 1996 was characterized by a strengthening of the United States embargo against Cuba through the adoption of the so-called Helms-Burton legislation, which includes a series of measures tightening the embargo, such as providing a mechanism for former owners of expropriated property to bring action in the United States courts against investors in such property, and provisions to deny United States entry visas to corporate officers and principal shareholders of firms investing in expropriated property.

2. More recently, the Cuban Government also complained about the possible further strengthening of the embargo as a result of new Congressional proposals which would result in a cut of United States aid to any country providing assistance to Cuba, or to countries trading with Cuba on a non-commercial basis. Also proposed are sanctions against any country providing assistance to Cuba's nuclear programme, and cutting funding to the International Atomic Energy Agency if that institution provides cooperation to Cuba.

3. The continuation and strengthening of the United States embargo against Cuba, including its extraterritorial effects, is affecting in different ways the difficult economic recovery process initiated in 1994. In the present context, three principal effects of the embargo could be assessed as follows:

(a) The embargo raises the risks and costs for foreign investment capital entering Cuba, as the United States legislation contains measures permitting court action in United States courts against investors deemed to be "trafficking" in property formerly held by United States citizens. In addition, the legislation authorizes the denial of entry into the United States of executives and officers of companies deemed to be trafficking in such property. While it is not possible to quantify exactly the deterrent effect that these

measures may have, it is likely that the potential flow of foreign investment into the country would be significantly affected;

(b) The embargo compels United States officials to withdraw United States support to international financial institutions which would seek to provide assistance to Cuba. This includes the Bretton Woods institutions, and has the secondary effect of increasing the difficulties of negotiating debt settlements and credit with public and commercial creditors, including Paris Club creditors. Again, it is not possible to quantify the effect of this measure. However, Cuba is one of the few countries in the world facing a deep restructuring of its economy without assistance from international financial institutions;

(c) The embargo has an indirect effect on the general economy by raising the costs of sourcing, financing and transporting imports. Cuba must pay higher shipping charges for its imports and must rely on short-term commercial credit. Given that Cuba relies heavily on food, fuel and medical imports, these higher costs have a negative effect upon social sectors such as health in particular. In addition, the embargo has cut off the supply of parts for certain types of United States-manufactured equipment, with particularly negative impacts on the health-care system.

4. To comply with their respective mandates while addressing the overall situation in Cuba, the United Nations organizations represented in Cuba have continued to work along a few focused lines, which they consider as a common agenda, namely:

- Supporting the economic restructuring process currently under way in Cuba;

- Contributing to improve, expand and consolidate social services;

- Promoting contacts and cooperation between Cuba and the rest of the world.

5. Achievements in these areas include the design and approval of new programmes addressing the most critical issues the country is facing. This is the case in particular of all the programmes recently designed and/or approved by the United Nations funds and programmes, which will focus on economic recovery (UNDP), food security (WFP) and consolidation of social achievements (UNICEF and UNFPA).

6. The specialized agencies represented in Cuba will also increasingly focus their respective activities on the food security issue (FAO) and on the consolidation of social services (UNESCO and WHO).

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION

[Original: English]

[7 May 1997]

1. UNESCO continues to encourage regional and international exchanges involving Cuban educators, scientists, intellectuals and artists. Furthermore, in order to assist the country in improving its integration into international tourist networks, a programme to encourage cultural tourism was launched in November 1996 which promotes the cultural and natural heritage, and various projects have been started that involve vocational training, the promotion of craftworkers and the creation of cultural routes.

2. Other action was taken by UNESCO in its fields of competence to mitigate the effects of the embargo:

(a) Throughout 1996, 2,700,000 school exercise books were provided to pre-school classes and primary schools, funded from the regular budget at a cost of $217,000;

(b) Equipment was contributed, to the value of $100,000 financed from extrabudgetary funds, for a computer laboratory for children with severe language difficulties, housed in the Miguel B. Diaz School in Havana and intended for children from all over Cuba;

(c) Financial and intellectual assistance was provided for Pedagogia 97, a congress of educators held at Havana in February 1997 and attended by 6,000 school teachers from Ibero-America;

(d) With financial and intellectual help from UNESCO a regional conference on education for the twenty-first century was held at Havana in November 1996 and attended by 700 participants, including Ministers of Higher Education, university rectors, professors and education administrators;

(e) To repair the damage caused by hurricane Lili, UNESCO contributed $100,000 to rebuild schools in Cienfuegos Province;

(f) To facilitate the circulation of books, a UNESCO cultural bookshop with publications in Spanish, English and French was opened in April 1997 in Havana with an initial investment of $60 thousand. A plan supporting book publishing is encouraging the distribution of works by Cuban authors, including: Versos sencillos (Simple verses) by Jose Martí, Calle Peña Pobre by Cintio Vitier, Antología de Poesía Africana by Rogelio Martínez Furé, Mensaje de América (Message from America) (anthology of essays), La Escuela Cubana del Deporte (sport teacher's handbook), La Juventud al Fin del Milenio (Youth at the end of the Millennium) (social science study);

(g) The publication, in the weekly Juventud Rebelde, of "periolibros" enables Cuba to be included in the Ibero-American network of periodicals

distributing these literary inserts. On the same subject, Cuba receives 15,000 copies of each monthly of the UNESCO Courier free of charge;

(h) In March 1997, the fifth Latin American Crafts Fair, FIART 97, was held with support from UNESCO and the participation of 100 exhibitors from 20 countries in the region. A prize, sponsored by UNESCO's Regional Office for Culture for Latin America and the Caribbean, was awarded at the Fair for "Crafts for the Visitor".

UNITED NATIONS CHILDREN'S FUND

[Original: English]

[13 August 1997]

1. The situation of children in Cuba continues to be adversely affected by a number of internal as well as external factors, including the embargo. As with the majority of such situations, it is impossible to separate the combined negative effects of those factors.

2. As of the end of 1996, Cuba still had the lowest infant mortality rate in the entire Latin American and Caribbean region, at about 8 per 1,000 live births, which is comparable to the rate in developed countries. Under-five mortality has decreased to about 6 per 1,000 live births and the incidence of low birth weight has decreased from about 9 per cent in 1994 to about 7 per cent. Immunization coverage for children is more than 95 per cent. Despite these successes, neonatology services lack essential supplies and equipment and, as a result, neonatal sepsis has become the third leading cause of infant mortality. And although Cuba received some neonatal respirators through humanitarian assistance, it has not been able to obtain the necessary spare parts and accessories.

3. Women's health services have experienced a serious decline over the past five years or so. By 1990, every woman over 35 years of age had been examined free of charge and mammography was included as a routine preventive procedure. However, the screening programme was discontinued in 1994-1995 owing to a lack of material recommended by WHO for X-rays and now mammograms are used only for women recognized as being at high risk for breast cancer.

4. Access to drugs for some 2,200 patients diagnosed as seropositive for the AIDS virus is severely limited. The Cuban Government has found it virtually impossible to obtain the medical drugs and supplies needed for specific tests and treatments from multinational pharmaceutical companies.

5. The condition of the water supply system continues to be a cause of serious concern. About 72 per cent of the drinking water has to be treated, but the lack of chemical supplies has led to the closing of 46 per cent of the installations as well as 40 per cent of the chlorination plants. This has increased the incidence of water-borne disease such as typhoid fever, dysentery, viral hepatitis, acute diarrhoeal diseases and parasitism, which seriously threaten children's health.

6. Cuban children are ensured basic education in spite of the scarcity of essential supplies and equipment. However, it is clear that the country is facing increasing difficulties in maintaining this basic child right. The global emergence of the child rights perspective should provide an opportunity to examine the reality of the situation in relation to its impact on all aspects of child survival, protection and development.

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

[Original: English]

[28 May 1997]

UNIDO is currently involved in the design of programmes and projects geared towards helping Cuba and its population overcome some of the consequences resulting from the embargo imposed by the United States and from the Helms-Burton law. The aim is to establish partnerships for the revitalization of Cuban industrial cooperation for product adaptation as well as the creation of export networks for the commercialization of its industrial and technical know-how.

UNIVERSAL POSTAL UNION

[Original: English]

[30 June 1997]

The Universal Postal Union is a specialized agency of the United Nations dealing with postal matters. UPU, while working within its sphere of technical activities, treats all of its members on equal footing without practising any discrimination.

WORLD BANK

[Original: English]

[4 April 1997]

The Government of Cuba withdrew from membership of the World Bank in 1960 and has not until the present time rejoined the Bank. As such, there are no current programmes of the World Bank of any direct relevance to resolution [51/17].